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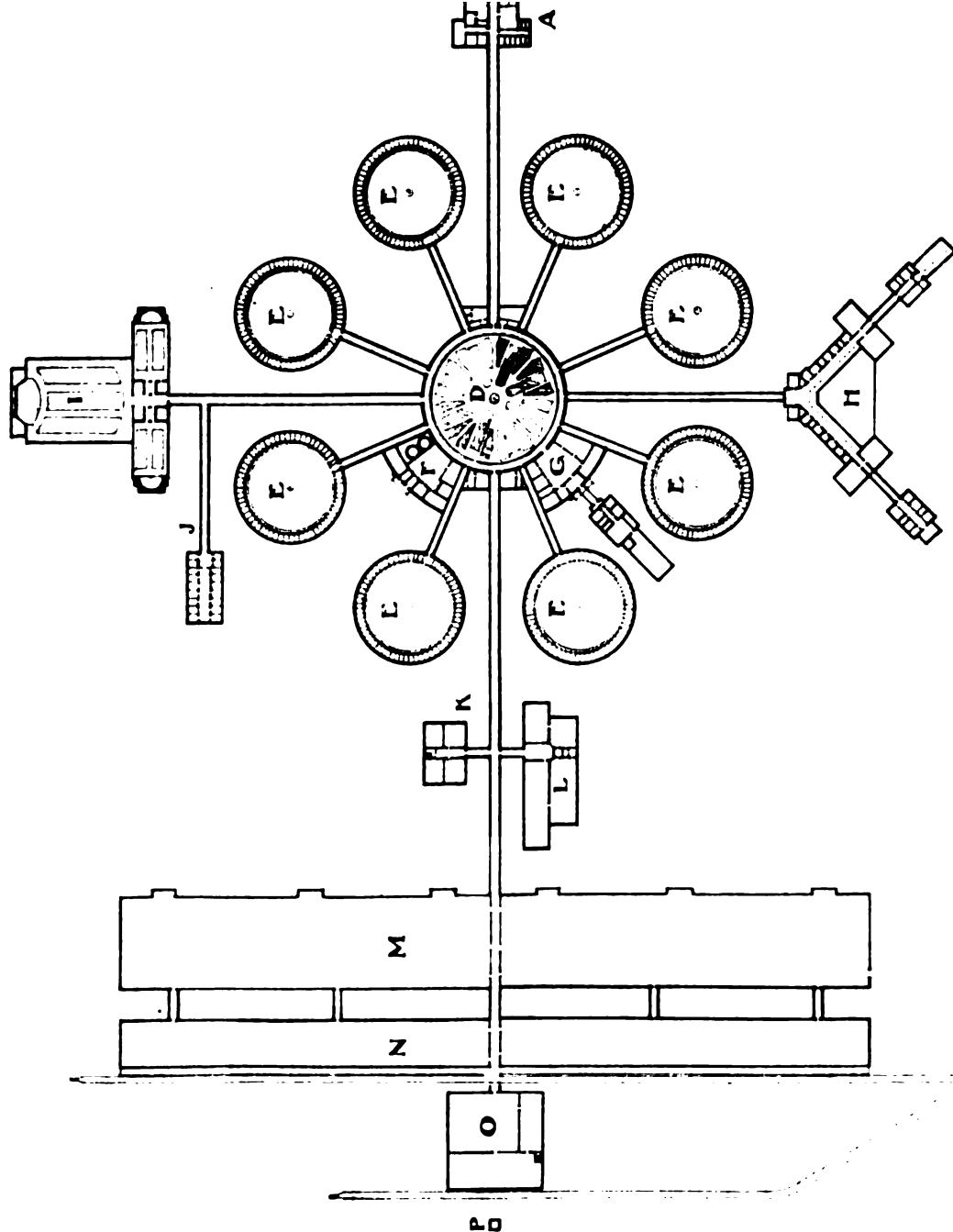
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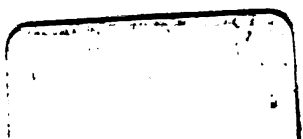
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Acting Managing Editor, ROBERT H. GAULT,

Assistant Professor of Psychology, Northwestern University.

Managing Director, FREDERIC B. CROSSLEY,

Librarian of the Elbert H. Gary Collection of Criminal Law and Criminology, Northwestern University.

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Communications relating to contributions and books for review should be addressed to the Acting Managing Editor, Evanston, Ill.

Subscriptions and business correspondence should be addressed to the Managing Director, Northwestern University Bldg., 31 West Lake Street, Chicago, Ill.

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CONTRIBUTORS TO THIS NUMBER.

William Remwick Riddell, Pulse Justice, King's Bench Division, High Court of Justice, Ontario, since 1906. He received his education at Cobourg Collegiate Institute, and Victoria University. (Mathematical and Nat. Science Prizeman), B. Sc., LL. B. He was called to the Bar, with honors and Gold Medal, in 1883, practiced at Cobourg, 1883-1892, and in Toronto, 1892-1906. He has been General Counsel for the Wabash R. R. Co., and Special Counsel for the city of Toronto in Civic investigation, etc. Former member of the Senate and Board of Regents, of Victoria University. Since 1894 he has been a member of the Senate of the University of Toronto, and for several years examiner in Roman Constitutional and International Law.

William E. Higgins is professor of pleading and practice in the School of Law of the University of Kansas, with which institution he has been connected since 1899. Prior to that time he was a practicing attorney in Kansas City, Mo. He was a member of the committee which drafted the new code of civil procedure of Kansas, and is now the chairman of a special committee on Crimes and Criminal Procedure of the State Bar Association of Kansas.

Joseph A. Hill is the Chief Statistician for the Division of Revision and Results in the Bureau of the Census and in that position has had general charge of the conduct of the special census of Institutional population, which includes the inmates of prisons, almshouses and insane asylums. He is a graduate of Harvard College, class of 1885. He pursued post-graduate studies in economics, political science, and constitutional law at Harvard and in Germany, at Berlin and Halle, receiving the degree of Ph. D. from the University of Halle in 1892. He has been a lecturer or instructor at Harvard and the University of Pennsylvania, studied tax systems of Europe as the agent of the Massachusetts Tax Commission of 1897, and has written a monograph on the English Income Tax. He has been connected with the Census Bureau since 1899, and had a large share in the preparation of the Census reports or bulletins on Illiteracy, Child Labor, Women at Work, and Marriage and Divorce.

F. Emory Lyon was a student at the University of Wisconsin in 1897, where he took a post-graduate course in Anthropology and Sociology. He is a graduate of the Chicago Theological Seminary, and Doctor of Psychology from the Chicago School of Psychology. Author of "The Art of Living." Former lecturer in the Froebelian Training School on "Primitive Play and the Child of To-day." Vice-president (1911) of the National Prisoners' Aid Association and of the Illinois State Conference of Charities and Correction. Founder and Superintendent of the Central Howard Association, the Prisoners' Aid Society operating in eight of the Central Western States. Dr. Lyon presented the subject of the "Payment of Prisoners" before the American Prison Association in 1908, which caused the appointment of a special committee for the consideration of this subject. He was asked to prepare a paper on this subject for the International Prison Congress in 1910, and to translate and review the papers written on this theme by foreign delegates. As a result of this discussion, the principle of the payment of prisoners was recommended by vote of the Congress, and several states and cities have successfully inaugurated legislation providing that prisoners be paid for the benefit of their dependents.

William Eddy Collett entered the Ohio Wesleyan University at Delaware, Ohio, in 1882. Impaired health compelled him to leave the University and he entered the work of the ministry. He was appointed pastor of a large circuit in northwestern Ohio, where he served for four consecutive years. At the end of a term of service in his second pastorate, in West Central Ohio, he transferred to Colorado, and there continued in the pastorate until he received a call to the General Secretaryship of the Colorado Prison Association to which position he was appointed on January 7, 1904. In the fall of 1909, on condition that he might retain the general oversight of the Colorado Prison Association, he accepted the call of the Trustees of the United Charities of Denver to the Executive Secretaryship of that work, and is now entering upon his third year of service in that capacity.

Robert Ferrari was born in New York City. Member of the New York City bar. Educated in the Public Schools of that city, in the College of the City of New York, and in Columbia College, from which he received the B. A. degree. He spent one year in post-graduate studies at Columbia University and received the degree of M. A. He taught school for two years. Afterwards he studied law at the Columbia University School of Law, and was graduated. He has been for three years a lecturer in Italian on Government for the Lecture Bureau of the Board of Education of New York City. He is also a writer on matters that concern the Italians in America, and was one of the founders of the only Italian branch of the Y. M. C. A. in the world outside of Italy. He is a teacher of Literature, Debating and Public Speaking in the Y. M. C. A. He has contributed legal articles to Nelson's Encyclopedia.

Caesare Lombroso (1836-1909). Appointed Professor of diseases of the mind at Pavia 1862, and eventually became professor of medical law and psychiatry at Turin. His great book, "The Criminal," appeared in 1875 and marked the beginning of the science of criminal anthropology. For many years he was editor of *Archivio di psichiatria antropologia criminale e scienze penali*, and is the author of numerous works.

EDITORIALS.

DO WE NEED THE LEGAL MUCKRAKER?

Do we need the legal muckraker any longer? I think not.

At any rate, I am sure not, if he is to use misrepresentation in his appeals to excite public sentiment. Under the term "misrepresentation" I include a fact knowingly so stated as to produce a false impression of it for the purpose in hand.

In recent articles in popular magazines, Messrs. Snyder and Connolly have published strong censures of our system of justice, in particular of our judicial methods. In the latest articles the honesty of our judicial personnel comes to be attacked. The spirit and method of these articles does not commend itself. In some of them, passages of my writing have been quoted in support. I stand by what I have ever said; but I disclaim sympathy with the spirit and method of those articles, and I venture to hope that my writings may not again be used by those authors for that purpose.

The article I desire here to criticize is entitled "Big Business and the Bench," second article, by C. P. Connolly, and appeared in *Everybody's Magazine* for March, 1912, page 291. In thus citing the volume and page of what I criticize, I do more than that writer does; for although he specifically censures a dozen Supreme Court decisions in various states, he does not in a single instance give the citation by which the correctness of his censure can be verified. Only by an occasional proper name or date can his cases be discovered in their original reports.

To discover the basis for his censure, I have thus traced the first two of them. What I found justified me in stopping at that point, and in now stating that misrepresentation, in the inclusive sense above used, is a part of the method used in that article; and in that kind of muckraking I see no advantage for any honorable cause. Let me particularize:

The article begins by stating the author's plan to show "to the citizen of one community the corruption of a court in another community," and continues by referring to "how widely the corruption by direct and indirect corporate influence has extended." He proceeds to emphasize railways as a special influence of that sort; "in many a state, litigants who approach the courthouse find that there is a railway side-track leading into the court-room, and that the locomotive blocks the door to justice." Then, taking the state of Missouri for his first illustration, he speaks of the Missouri Pacific Railroad as requiring to "look to the complexion of

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the Supreme Court of Missouri," and as securing for its lobbyist a political boss who "got more of his friends on the Supreme Bench of Missouri" than a certain other boss. The entirely obvious meaning, which the author does not choose to state in so many words, is that the Missouri Pacific Railroad had a corrupt control of the personnel of the Supreme Court. Then follows the supposed proof or illustration, in the shape of two decisions of that court; these, as stated by the journalist, are adapted to make the reader feel that the corrupt tree has naturally brought forth evil fruit.

Now I shall not burden these pages with any labored attempt to analyze the decisions he uses and to show that any intelligent lawyer would realize that there was another side to both of them. Both dealt with general principles which are intrinsically hard to handle and have long been the subject of differing views in the various courts of this country and England. On such points, the decision of a Supreme Court one way or the other throws no more light on the corruptness or honesty of its personnel than does a man's vote for the Republican or Democratic ticket; it merely shows that the other person's view differs from ours, and perhaps that he is wrong and we are right.

But what I desire to call attention to is the unfair use made by the journalist of those two cases to prove or illustrate his point that the Missouri Supreme Court is the corrupt tool of the Missouri Pacific Railroad. And here is how he misrepresents them:

(1) One of the cases is *Murphy v. Wabash Railway Co.*, 1910, 228 Mo. 56. I pass over the circumstances that the journalist refrains from giving the citation; also that it is not a Missouri Pacific case. Now, assuming that the judicial doctrine in this case as represented by him is open to criticism, what he has done is to represent as a decision of the Supreme Court the dissenting opinion of a single judge of that court. Anyone who desires to verify this may consult the above citation. The fact was that the Supreme Court decided for the plaintiff and against the railroad, with one judge out of the seven dissenting. Yet the journalist cites this dissenting opinion's language as one of his two illustrations of the corrupt control of the court by the railroad!

(2) His other instance is the case of *Oglesby v. Missouri Pacific Railroad*, 1903, 177 Mo. 272, a case which has been several times to the Supreme Court between 1893 and 1903. Note that the journalist again does not give the citation of this case in any of its five reported decisions; and I have not tried to follow up the earlier ones. But the fact is that the above and last decision was by a divided court, four to three, in favor of the railroad; that the first three were in favor of the employe-plaintiff, and that in two of those three the court stood six to one; while in the

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fourth instance the decision in favor of the railroad was made (as I infer from the fifth opinion) only by a majority of four to three. In other words, during those ten years, while the various members of the court gave 35 votes in all on the case, *a substantial majority*, at least 22 and perhaps 24 of the 35 votes, were *against the railroad*. And yet that case is used by the journalist as his other proof or illustration that the Supreme Court of Missouri was controlled by the railroad!

Against a campaign based on such methods of misrepresentation, I protest. The people need the facts about justice and the courts. But what they need is facts, not misrepresentations. Reform is needed, somewhere, somehow. But what intelligent citizen can say where or how, if he finds that he is being fed with garbled facts, which are not facts at all, for the purpose put forward?

The worst thing that can happen to the cause of reform is to have such champions. I wish that they would put up their muckrake on their shoulder and go off quietly to some other stable, and leave the cleaning of this one to people who are willing to restrict themselves to the methods of fair controversy and the "square deal." Demagoguery has no place on either side in the honest clash of views between Conservatism and Progress.

JOHN H. WIGMORE.

RACE IMPROVEMENT.

One of the questions that must persistently come to the front in the minds of thinking educators and social workers is this: Does all that we accomplish in the way of individual improvement of delinquents and defectives of every other sort stop with the individual who is immediately affected, or does it extend to the stock of future generations, that is, to the race? Because of the meager evidence for the extension of these accomplishments it is generally assumed that the most that can be expected is the improvement of the individual directly affected. Some qualification is called for. As a matter of course a group of people who have been reached by our social agencies make their own environment, which is a grade better than that from which they came. To this environment the next generation is heir and consequently it comes upon the stage with an advantage. In a similar manner further successive advances are accomplished. This leaves the fundamental question of *stock* improvement untouched. It increases our sense of responsibility in the matter of protecting each succeeding generation. Under this conception our devices are superficial rather than fundamental. They are in the nature of treatments of symptoms rather than causes. The problem is approached by the biologist through the doctrine of chance variation and natural selection of the fittest for survival. But the problem here is dis-

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inct from that of the biologist. Here we are thinking of the effect of variations that are produced, not by chance, but voluntarily through the efforts of the practical psychologist, educator, or social worker. Furthermore, we are interested in biological variations only in as far as they may be the effect of environmental forces.

Recently there has come to light the results of anthropological researches which possibly imply support for the proposition that the stock may be improved directly through the influence of the environment. I refer to the investigations by Boas into the departures from the original physical type which have been observed in the descendants of immigrants in America. All characteristics such as stature, which without doubt are due to nutrition, are not considered. Attention is drawn solely to such supposedly stable characteristics as length and breadth of skull and facial angle. These characteristics differ in American-born children of immigrants from corresponding features in foreign-born children of immigrants and from those of their parents. For instance, in the case of the Sicilian, the length of the skull in proportion to its breadth diminishes, whereas the reverse is true of the Bohemian. These modifications, moreover, are more marked in the case of children born three years than in the case of those born one year after their parents' immigration. The fact that the situation is reversed between the Bohemians and the Sicilians and certain other facts which I do not recount in this place, suggest that the effects can hardly be due to mechanical influences such as the pressure of American as distinct from foreign headwear (if there is a distinction). Indeed, it is safe to say that the effect cannot be traced to mechanical causes of any sort, and Dr. Boas does not yet believe that it is due to improved nutrition or to the reverse. As far as we can go at present is to say that it is due to changed environment. Dr. Boas is not yet ready to say how permanent the modifications referred to may be.

Now we come to the significant matter. If under the influence of the environment changes may be brought about and accumulated through successive advances in the relatively stable features referred to above it is less difficult to think that corresponding changes in the nervous system, which is more open to modification, may accumulate also. Then since mental and neural, especially brain processes, are apparently correlated, we should have to say the same of mental as of physical modifications. We could then answer the question proposed above in the affirmative.

At the present stage of our knowledge the foregoing is certainly no more than hypothetical. Even if it were assumed that the stock of

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the race may be improved through educational and other social advances acting upon the environment, we should still be compelled to recognize the fact that there are opposing agencies. These agencies are almost omnipresent and at the same time frequently so disguised that it is practically impossible to maintain continuously that environmental condition which might otherwise possibly favor the improvement of the stock. Among these unfavorable forces is the changed economic status of the mothers of thousands of the present and past generations which makes them wage-earners and thus subjects them to a strain of life to which they are unfitted and all to their own and their offsprings' detriment. Hence we are face to face with the deterioration of the race and our work must continue to be negative quite as distinctly as it is positive—to keep away harmful while we provide beneficial influences.

ROBERT H. GAULT.

A PROPOSAL FOR OFFICIAL EXPERT WITNESSES.

It has been frequently proposed that there be designated in some way official experts in certain special fields who may be called as witnesses in cases in court involving questions in such special fields. One such proposal is embodied in a proposed statute for the state of New York in an article by Albert S. Osborn in "Fair Play" for January 13, 1912. The reasons advanced for having official experts are mainly that competent experts may be secured, and opportunities for venal and corrupt experts lessened. It is a violent assumption, however, that this object would be accomplished by the appointment of official experts. Such appointments would be sought after by those least qualified for them, and not by the men of the greatest ability and standing in their various fields. It would be too much to expect that the most competent men would be obtained for those positions. It would be difficult to obtain them, and such a provision would be simply opening another door to the endeavors of those who are unscrupulous and lacking in ability. Such a provision is an attempt to add something to the intrinsic worth of the testimony of a witness by giving an official sanction to it. In the case of a man of high reputation and standing and ability, the official position would add little, but it might add much in the case of one of little ability or probity, who might in some way secure such an appointment. The loss would more than overbalance any gain. But such a provision would seem to be particularly objectionable, because it places emphasis on the personality of the witness rather than on the substance of his testimony. The personality of the witness should have nothing to do with the case, except as affecting his

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credibility. The main concern is the information he may impart to the jury. The best and most rigorous test, both of the honesty of the witness and the correctness of his testimony, is the test of cross-examination. An incompetent or venal expert, who might secure an official appointment, could to some extent hide behind it from this weapon. If the cross-examination does not always completely fulfil its functions, it is because of the lack of skill or ability of the examiner in the use of it. It remains, however, the most satisfactory test of the witness that has been devised, both in rigorousness and comprehensiveness. To weaken it in favor of a partial method of uncertain operation would seem to be a doubtful experiment.

EDWARD LINDSEY.

IMMIGRATION AND CRIME.

In the January number of the *American Journal of Sociology*, Dr. Issac A. Hourwich, statistician in the Bureau of the Census, has a timely article on "Immigration and Crime." He takes to task the report of the New York State Superintendent of Prisons for 1909, which charges that the recent increase in crime in the state of New York has been due to the influx of vicious and ignorant classes through immigration. Dr. Hourwich has no difficulty in showing that there is no direct connection between immigration and crime in the United States, popular opinion to the contrary notwithstanding. On the contrary, as he shows, the wave of criminality in New York state, of which the superintendent of prisons complains, coincides with the lowest ebb of immigration, whereas the high tide of immigration for a number of decades past has coincided with a decrease of crime.

What Dr. Hourwich proves in his interesting paper has, of course, long been known to statisticians and sociologists, namely, that there is no *direct* connection in our country between immigration and crime. On the contrary, the average foreign-born citizen of this country is, if anything, slightly more law-abiding than the native-born white American. This is especially true of the immigrants from northern Europe and also of those from Russia. In general, these people come from countries where government and criminal courts are more efficient than in the United States. Hence, among immigrants from such countries there is greater respect for law, despite the fact that these people are away from home in a strange environment, than there is among the average native-born Americans. As Dr. Hourwich shows, the increase of crime corresponds not with the increase of immigration, but rather with periods of economic and industrial depression. In other words, the economic prosperity which favors immigration tends at the same

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time to lessen crime, while, *vice versa*, economic depressions check immigration and at the same time tend greatly to increase crime. These familiar sociological truths, Dr. Hourwich demonstrates beyond any serious question.

However, he carries the implications of his argument much too far when he allows the impression of his article to be that there are no grounds for putting any restrictions upon immigration whatsoever (beyond those which now exist) in criminal statistics. He neglects to mention the well-known fact that while the immigrants from northern Europe are generally law-abiding, some of the immigrants from southern Europe add considerably to our criminal classes. Thus, the Italians in 1900 constituted but 4.7 per cent of our foreign-born population, while in 1904, according to the prison census taken in that year, they furnished 14.4 per cent of the foreign-born white major offenders committed to prison during that year. In other words, even though we allow for a slight increase in the proportion of Italians among our foreign-born between 1900 and 1904, apparently they contributed nearly three times their proportion of major offenders in comparison with other foreign-born elements. Prof. Fairchild, in his book upon "Greek Immigration," has shown that the same thing is true also of our Greek immigrants. In other words, the exaggerated criminal tendencies of certain of our immigrants from southern Europe is offset and concealed in statistics by the law-abiding tendencies of our immigrants from northern Europe.

Again, while there is no direct relation between immigration and crime in this country other than that which has just been noted regarding certain classes of immigrants, there probably is a very great and obscure indirect relation. This is suggested by the well-known fact that while the foreign-born themselves do not contribute out of proportion to their numbers to the criminal classes, the children of the foreign-born apparently do. The special prison census of 1904, for example, says "of the native white prisoners [committed during 1904] 29.8 per cent were of foreign parentage, while of the entire native white population only 18.8 per cent were of foreign parentage." In other words, the children of the foreign-born in 1904 contributed nearly 60 per cent more in proportion to their numbers than they should have contributed to those convicted and sent to prison. While this does not suggest that there is any necessary relation between race or nationality and criminal tendencies, it does suggest that there is a very considerable indirect relation between our present unregulated immigration and crime. Our immigrants, in other words, frequently fail to better their

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condition by coming to this country, and while they themselves may not drop into the criminal class, their children frequently do.

Again, the very great criminal tendencies among the native-born whites in this country may be perhaps in part ascribed to the competition which free immigration has brought to the lower elements among the native whites. As Dr. Hourwich himself has demonstrated, there is a close connection between disadvantageous economic circumstances and crime, and there can be scarcely any question but that the native white laborer in this country has very often found himself in disadvantageous circumstances on account of the overwhelming influx of cheap foreign labor. The whole question, therefore, of the relation of immigration and crime still remains an open one in spite of what protagonists for restriction or non-restriction have had to say.

C. A. ELLWOOD.

THE FEEBLE-MINDED DELINQUENT.

The introduction of a bill into the New York legislature providing for the establishment of a custodial asylum for feeble-minded male delinquents brings to a focus in that state the problem of the mentally defective prisoner. For over a year a committee of the Prison Association of New York has stimulated interest in this problem. During the past year, several institutions in New York have given careful attention to the question, and at the beginning of 1912, through arrangement with the commissioner of corrections in New York City, a careful card index was installed in the "Tombs," which gives to the psychiatric examiner of the Prison Association a chance to discover in each entering prisoner any signs of mental defectiveness. Dr. Parker, the above-mentioned examiner, estimates that at least 1,500 men pass through the Tombs each year who are mentally defective and semi-responsible.

The proper treatment of the feeble-minded delinquent is one of the most important problems now before the penologists and criminologists of this country. Its significance is especially appreciated by the institutional heads who see their prisons and reformatories "clogged," as they often express it, with mentally backward and deficient prisoners, who, in the words of Dr. Christian, of Elmira Reformatory, "have no place in a reformatory in the first place, and are a hindrance to its work for the brighter boys."

The proportion of feeble-mindedness in institutions is not yet generally established. Dr. Christian, by estimating those who impress him at once or gradually as mentally defective, believes that even 40 per cent of the inmates of Elmira Reformatory fall under the head of the mentally defective. Dr. Goddard, of Vineland, believes that all

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feeble-minded persons would be delinquents unless carefully guarded. The State Board of Charities and the Prison Association of New York are both conducting an active campaign to focus popular interest upon the problem in the state of New York.

That there is need of segregation, few now deny. The classic example of the Jukes family (the original records of which family were recently found and are now being brought down to date by the Carnegie Institute at Cold Spring Harbor, N. Y.) has proved what the terrific cost of unchecked degeneracy is to communities. Tests, such as those of Binet and Healy and Huey, are now being studied and adopted in many an institution.

A word of warning from one whose work it is to secure legislation in New York state is perhaps in order. Many statements are being made as to the prevalence of feeble-mindedness. We find even such extreme conditions as those cited by Dr. Goddard in connection with a recent study of normal and abnormal mental conditions in one hundred children in the children's court of an eastern city, in which the ninety-seventh child was declared normal by Dr. Goddard. Dr. Goddard has a splendid national reputation, and we can depend upon his carefulness and conservatism, but it behooves us all, who are seeking the establishment of adequate facilities for the custodial care of the feeble-minded, not to accept any results but those guaranteed by the strictest investigation and the most conservative of reputations. There is danger in the half-finished or too hastily announced results of tests performed, perhaps, by recent learners, who stand aghast at the very large percentage of inmates who seem to fail to measure up to the tests applied.

The problem is just now in the foreground. Sympathy is notably frequent in the discussion of the question; legislators are inclined to see a great light. The light must be a true light, not a flickering jet or a sudden explosive puff. It behooves those of us who are not scientists to bide our time; to make all efforts to have any proposed study a real scientific study; to hold back conclusions till they can be checked up; to bring about, so far as in the nature of the problem lies, the standardization of tests, and to realize that there can be a most disagreeable and humiliating rebound in statistics and alleged percentages that have not been gained under conditions excluding so far as possible the chances of error.

O. F. LEWIS.

REPORT OF THE COMMITTEE OF THE KANSAS BAR ASSOCIATION ON CRIMES AND CRIMINAL PROCEDURE.¹

WILLIAM E. HIGGINS.

By way of introduction, your committee states that it has been the understanding of its members that the committee was not appointed merely to formulate measures that would change present laws but to suggest such changes as may be necessary. Legislation without improvement is to be condemned. The desire to write new laws upon the statute books is not sufficient excuse for change. Therefore, at the beginning of the task the committee felt that it should investigate rather than suggest amendments based on mere defects or current criticism. To this end, the field was divided into two general parts:

1. The criminal law prior to the time of punishment.
2. The proper treatment of convicted persons.

Turning to the first, the committee divides the field into the following miscarriages of justice due to,

1. Criminal procedure.
2. The organization of courts.
3. The definition of crimes.
4. The human agencies employed to ascertain the guilt or innocence of the accused.

Preliminary to its report, the committee wishes to state some matters that are apparent to every well informed lawyer in the state of Kansas and that should be made known to every citizen.

This state adopted a code of criminal procedure and a Crimes Act in 1868, and in the code of procedure there were several measures which have abolished the technical requirements of the common law indictment. Among these changes may be mentioned the information by which charges may be brought promptly and speedily against offenders; the provision for amendment of the information; the requirement that the charge against the accused must be stated in simple and concise language.

¹A revision of the report presented in January, 1911, to which is added the report rendered in January, 1912. The committees of 1911 and 1912 were composed respectively of the following named gentlemen: William E. Higgins, chairman; J. C. Ruppenthal, and William Osmond; William E. Higgins, chairman; J. C. Ruppenthal, and John Dawson. The committee of 1912 has not yet completed its investigations, has been continued, and will report further in 1913.

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Paragraph 6685 of the general statutes of Kansas, 1909, is as follows:

"6685. Indictment sufficient. No. 100. The indictment or information is sufficient if it appear therefrom:

"First. That the indictment was found by the grand jury of the county in which the court is held, or the information presented by the prosecuting attorney of the county in which the court is held.

"Second. That the defendant is named or described in an indictment as a person whose name is unknown to the grand jurors, or, in an information, by the prosecuting attorney.

"Third. That the offense was committed within the jurisdiction of the court, or is triable therein.

"Fourth. That the offense charged is clearly set forth, in plain and concise language, without repetition. And,

"Fifth. That the offense charged is stated with such a degree of certainty that the court may pronounce judgment upon conviction, according to the right of the case."

Paragraph 6686 is as follows:

"6686. Not quashed, when. No. 110. No indictment or information may be quashed or set aside for any of the following defects:

"First. For a mistake in the name of the court or county in the title thereof.

"Second. For the want of an allegation of the time or place of any material fact, when the venue and time have once been stated in the indictment or information.

"Third. That dates and numbers are represented by figures.

"Fourth. For an omission of any of the following allegations, viz.: 'With force and arms,' 'contrary to the form of the statute,' or, 'against the peace and dignity of the state of Kansas.'

"Fifth. For an omission to allege that the grand jurors were impaneled, sworn or charged.

"Sixth. For any surplusage or repugnant allegation, when there is sufficient matter alleged to indicate the crime and person charged. Nor,

"Seventh. For any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits."

These provisions have for forty-two years prevented the abuses in procedure which have been advertised in the current public prints as examples of "absurd and mischievous consequences of the highly technical character of the criminal procedure of this country." The attention of the citizens of Kansas is called to the fact that, whatever other mistakes have been made by our courts, the criminal procedure of Kansas is free from the consequences of the omission of the word "the" from the indictment, or of the failure to conclude the information with the words "contrary to the peace and dignity of the state." Your committee believes, however, that many of our citizens accept the current criticisms of criminal procedure in general as applicable to the procedure of this

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state. We therefore suggest that it is the duty of every member of this association to use his efforts to see that this erroneous belief is corrected.

In order to ascertain the condition of the criminal practice, the committee sent out two circular letters. The first was directed to the judges and prosecuting attorneys of the state and read as follows:

"DELAYS IN PROCEDURE."

"The answers to the following questions need not be confined to this paper, as it is desired to obtain such information as you may offer on each question.

"1. Please state all the different means in your experience by which prosecutions in criminal cases have been delayed in Kansas.

"2. Please suggest how each delay stated by you may be prevented by law, and yet preserve to the accused a fair trial.

"3. In your experience is much of the delay due to the leniency of the trial magistrate or the prosecuting attorney?

"4. If you answer the above question in the affirmative, what remedy do you propose besides a change of officials?

"5. Can the time lost by appeal or proceedings in error be shortened and yet preserve the rights of the accused?

"6. If so, how?

"7. In your experience is there much delay in Kansas in securing a jury?

"8. Please suggest means by which unnecessary delays in securing juries may be prevented by law.

"9. When there are a number of defendants, would you suggest decreasing the number of challenges now allowed to each individual:

"a. When all of the defendants are represented by the same counsel?

"b. When not represented by the same counsel?"

While a number of answers contained suggestions, valuable for other purposes, your committee states that it was the opinion of the judges and county attorneys that there is not much reason for complaint because of delays and technicalities due to the provisions or omissions of our criminal procedure.

Your committee also sent to the various clerks of the district courts of the state a circular letter, to which eighty-three responses were received of which the following is a summary:

1. The number of prosecutions pending at the beginning of this period....	481
2. The number begun during this period.....	4,755
3. The number of convictions.....	2,535
4. The number of acquittals.....	462
5. The number of mistrials which were not followed by dismissal.....	91
6. The number of dismissals.....	1,676
7. The number not tried during the three years.....	472
8. The number appealed to the Supreme Court.....	65

An examination of the Supreme Court reports of Kansas shows the following dispositions of criminal cases appealed to that court for five years, from January 1, 1906, to December 31, 1910:

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Favorable to Defendant—

1. Conviction reversed	9
2. Conviction reversed and remanded.....	24
3. Information quashed	2
4. On arrest of judgment.....	0
5. Question reserved.....note a.....	0

Favorable to the State—

1. Conviction affirmed	124
2. Information sustained	7
3. On arrest of judgment.....	0
4. On question reserved.....note b.....	1
5. Defendant's appeal dismissed	8

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Note a.—*State v. Hardenbaugh*, 75 Kan. 849, dismissed.

Note b.—*State v. Lyon*, 83 Kan. 168, when jury found the fact.

But while your committee is able to make a favorable report upon the condition of the criminal procedure of the state, it does not believe that this procedure is perfect or that it cannot and should not be improved wherever possible. It must be remembered that the conditions in this state are such as to avoid a severe test of our procedure. This is due largely:

1. To the comparatively small number of criminal offenders, caused no doubt by the lack of congested centers and to the size of our population.
2. To the character and education of our people.

As the population and wealth of the people increase and the various enterprises and relationships become more complex, the administration of criminal law will be rendered more difficult. Juries are now selected in this state without delay, but this may not be true in the future should our cities so increase in size that time must be taken to examine the jurors for prejudice because the jurors are unknown to the attorneys. Other circumstances might be mentioned to show that the difficulty of the administration of the criminal law increases with the size, wealth, complexity of interests, and character of the population. It is not enough, therefore, to state that the criminal procedure is at present satisfactory. Opportunities by which justice may be thwarted or unnecessarily delayed should be eliminated so far as possible. To accomplish this, the entire field of procedure must first be examined to ascertain what the procedure should be as compared with what it is. Legislation to prevent present specific abuses is often a mere makeshift, diverting the attention from fundamental errors, and creating new difficulties by inconsistencies. The work of investigation should include the follow-

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ing: the determination of the fundamentals and the discovery and tabulation of abuses.

As to the fundamentals of procedure, your committee states that some of its members became directly interested in the labors of a similar committee of The American Institute of Criminal Law and Criminology for the year 1910 and, without adopting or endorsing that report as its own, your committee presents the same here, after some alterations in the order of the propositions:

"I. Rules of procedure intended solely to provide for the orderly dispatch of business, saving of public time, and the maintenance of the dignity of tribunals should be distinguished carefully from rules intended to secure to the accused a fair opportunity to meet the case against him and a full opportunity to present his own case. Rulings upon the former class should be reviewable only for abuse of discretion and nothing should depend on, or be obtainable through, the latter class except the securing of such opportunity."

We believe this to be practically the rule in Kansas whenever our Supreme Court has been called upon to distinguish between rules of procedure within the discretion of the trial court and those which belong as a matter of right to the accused. Improvements in this respect cannot be made by law but only by education of the trial courts who are to apply these rules. Miscarriages of justice, therefore, in this respect will be due entirely to the failure of the individual to exercise the proper discretion and certainly cannot be charged to the law.

"II. No prosecution should be thrown out solely because brought in or taken to the wrong court or wrong venue, but if there is one where it may be brought or prosecuted, it should be transferred thereto and go on there, all prior proceedings being saved."

This is practically the rule in this state as provided by paragraph 6810 of the General Statutes of Kansas for 1909. The only difference is in the use of the words "to the wrong court or wrong venue," instead of, "in the wrong county," as provided by our statute. (Since the question of venue of offenses committed within the state of Kansas arises only when brought in a court in the wrong county, the proposition is not new to our procedure and no change is necessary.

"III. Questions of law conclusive of the controversy, or of some part thereof, should be reserved, and a verdict should be taken subject thereto, if the questions are at all doubtful, with power in the court and in any other court to which the cause may be taken for review to enter judgment either upon the verdict or upon the point reserved, as its judgment upon such point reserved may require."

This proposition may be divided into two parts: First, that, after defendant has been acquitted, the Supreme Court shall have power to review an error, notwithstanding such review cannot affect the accused because of the constitutional provision against a "second jeopardy;" second, that it shall be the practice to reserve questions of law and

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proceed to the verdict of the jury, which shall be upon the issues of fact raised by the pleadings.

The present code says (Sec. 6857, Gen. Stat. 1909): "Appeals to the Supreme Court may be taken by the state upon a question reserved by the state." The state has made several attempts to reserve a question after a verdict or finding of fact in favor of the defendant, or after a motion to discharge has been sustained. But the Supreme Court has declared that it had no power to review the question reserved under these circumstances and has dismissed the appeal. See the following cases:

State v. Hardenbaugh, 75 Kan. 849; *State v. Hickerson*, 55 Kan. 133; *State v. Smith*, 49 Kan. 358; *State v. Moon*, 45 Kan. 145; *State v. Crosby*, 17 Kan. 356.

It may happen that the constitutionality or the interpretation of a statute is involved in the case. It would seem that for the sake of future guidance of trial courts, questions should be settled in the case at bar and not deferred until some trial court has adopted a contrary view of the same question and the matter carried to the Supreme Court by the defendant.

If it is thought that an amendment of the constitution will be required before such power can be conferred upon the Supreme Court, a constitutional amendment and a statutory provision is given in the latter part of this report. (See "Matter Prohibited," 3a.)

Second, that it shall be the practice to reserve questions of law and proceed to the verdict of the jury, which shall be upon the issues of fact raised by the pleadings.

Without approval by the committee, constitutional and statutory provisions by which the right may be obtained are presented in the latter part of this report.

"IV. Any court to which a cause is taken for review should have power to take additional evidence by affidavit, deposition or reference, as rule of court may prescribe, for the purpose of sustaining a verdict wherever the error complained of is lack of proof of some matter capable of proof of record or other incontrovertible evidence, defective certification or failure to lay the proper foundation for evidence which can, in fact, without involving some question for a jury, be shown to have been competent."

This provision would not deprive the accused of the constitutional right to a trial by jury, although, as proposed, it does deprive him of the right to face the witnesses. A statutory provision that avoids the latter objection is stated in the latter part of this report. (See "Matter Submitted," 2.)

In *State v. Crosby*, 17 Kan. 356, the prosecution failed because, in the estimation of the trial court, no proper foundation was laid for the introduction of evidence to show the incorporation of the person from

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whom the defendant was charged to have embezzled a certain amount of money. Had the trial court admitted the evidence and the defendant been convicted, on appeal a new trial might have been granted. A jury would, however, have passed upon every fact necessary to show the elements of the offense, and the only new evidence needed would have been that which was merely foundation evidence. No error was committed so far as the merits of the case were concerned. Why not confine the new inquiry to such evidence as is necessary to lay the proper foundation? This rule is analogous to section 580 of the new code of civil procedure, which reads as follows:

"In all cases except those triable by a jury, as a matter of constitutional right, the Supreme Court may receive further testimony, allow amendments of pleadings or process, and adopt any procedure not inconsistent with this act which it may deem necessary or expedient for a full and final hearing and determination of the cause."

"V. No conviction should be set aside or new trial granted for error as to any matter of procedure, unless it shall appear to the reviewing court that the error complained of has,

- a. Resulted in a conviction contrary to substantive law, or,
- b. Deprived the accused of some right given by adjective law to insure a fair opportunity to meet the case against him or a full opportunity to present his own."

The provision of our criminal code is as follows:

"6867. Errors disregarded. No. 293. On an appeal, the court must give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties."

This section was adopted in 1868 and, although it has not been interpreted so as to require the defendant on appeal to make an affirmative showing of error in all cases, yet your committee believes that the doctrine of "harmless error" need not be carried beyond the spirit of the code as interpreted by our Supreme Court.

"VI. It should be permissible.....to prosecute any and every species of offense by information after examination and commitment by a magistrate, permitting also prosecutions by indictment with or without such examination and commitment."

The information has for many years been almost the sole, though not the exclusive means, of charging the offense. Although our method of calling a grand jury has been criticised as cumbersome, in view of the satisfactory operation of the information we suggest no changes in the law of indictments.

"VII. Amendments of indictments or informations should be allowed:

- "1. As to all formal matters in any court at any time;
- "2. In order to prevent variance by the trial court, before or during trial, upon such terms as will afford to the accused reasonable notice and opportunity to make his defense;

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"3. After trial, to conform to the proofs, either in the trial court or in a court of review, where the variance was not expressly brought to the attention of the trial court when the variance was offered and the trial proceeded without claim by the accused that he was not properly notified of the case actually made against him."

In view of the almost exclusive use of the information, your committee sees no need of urging a provision for amendments of the indictment, but the committee has formulated a provision for amendments of the information, which is presented in the latter part of this report.¹

"VIII. The office of the indictment or information should be:

"a. To give the accused notice of the crime with which he is charged and of the case on the facts which will be made against him;

"b. To set out the facts constituting the alleged offense with sufficient exactness to support a plea of former conviction or acquittal, as the case may be."

The report of the Committee of the American Institute of Criminal Law and Criminology adds:

"The further office of providing a formal basis for the judgment of conviction, so that the indictment or information may set forth everything which is necessary to a complete case on paper, no longer serves any useful end, produces miscarriages of justice and should be done away with."

Before submitting formal matter for consideration the committee states that it has been unable to make a careful examination of the remaining parts of the criminal law prior to the final conviction of the accused, namely, the organization of courts, the definition of crimes and the human agencies employed to ascertain the guilt or innocence of the accused. Individual members of the committee have gathered considerable data but the committee has been compelled to confine itself to the investigation of our criminal procedure. Improvement upon the crystallized experience of the years can be accomplished only after a long course of investigation and hard reasoning. Before the inventor can act efficiently and successfully, he must see clearly and think correctly. It is possible that miscarriages of justice because of delays and technicalities may be reduced by a better organization of our courts. Certain it is that much of the technicality of the law is due to definition of crimes. Improvement in the classification of crimes may be possible. Then too, legislation has been fragmentary. Additions and amendments to the Crimes Act have been made from time to time by various legislatures through bills prepared by different legislators. Necessarily, the definitions of crimes will lose or lack exactness of expression, and they may even be inconsistent. A complete revision, not a compilation, of these may be necessary. The folly of borrowing statutes from other jurisdictions without a careful investigation of our own will create inconsistencies, as is shown in the case of *State v. Rhodes*, 77 Kan. 202. In this

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case the question was whether a real estate mortgage was "deed or writing for the conveyance or assurance" of lands, etc. On argument, it was shown that the language of the Kansas Act had been taken from a Missouri statute and that the Supreme Court of Missouri had decided a mortgage to be a "conveyance" within the meaning of the Missouri statute. In Kansas, however, a different theory of a real estate mortgage prevails. It is "a mere security—an incident to a debt to secure which it is given." Therefore the failure in the mortgage to recite or describe a prior mortgage with intent to defraud was not an offense under our statute.

In view of all of the above, our committee presents the following for action of this association:

MATTERS SUBMITTED.

1. We recommend that a Committee on Criminal Law and Procedure be continued, the members of which shall be appointed by the president of the association for the ensuing year.

2. We present for consideration the following amendment to the statutes:

"6867a. The Supreme Court, without ordering a new trial, shall have the power to direct the trial court, from which the appeal was taken, to take additional evidence, the defendant being present, to make findings of fact and to transmit the same, together with the evidence, to the Supreme Court as now provided by law for a transcript of the evidence, such additional evidence being for the purpose of sustaining a verdict wherever the error complained of is lack of proof of some matter capable of proof by record or other incontrovertible evidence, defective certification, or failure to lay the proper foundation for evidence which can, in fact, without involving some question for the jury, be shown to have been defective."

3a. We offer the following amendment to the Constitution in order that the Supreme Court may be authorized to pass upon questions reserved in cases where the defendant has been acquitted:

Amend article 3, section 3, by inserting the words "which may include provision for review of question of law reserved by the state in criminal cases where the accused has been convicted or acquitted," so that the section shall read as follows:

"3. The Supreme Court shall have original jurisdiction in proceedings in *quo warranto*, *mandamus*, *habeas corpus*, and in injunctions brought by the State, and such appellate jurisdiction as may be provided by law, which may include provision for review of questions of law reserved by the state in criminal cases, whether the accused has been convicted or acquitted."

3b. We submit the following for consideration: to amend the General Statutes of 1909 by inserting section 6812a, as follows:

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"The trial court may submit to the jury the issues of fact arising upon the pleadings, reserving any question of law arising in the case for subsequent argument and decision, and such court and the Supreme Court, to which the case may thereafter be taken, shall have the power to direct judgment to be entered either upon the verdict or upon the point reserved, as its judgment upon such point reserved may require."

This provision, though differing slightly in phraseology, was presented to the American Bar Association in 1909 in an "Amended Bill to Regulate the Judicial Procedure of the Courts of the United States," by a special committee, and was adopted. (See 34, *Rep. Am. Bar Assn.*, 603, 82.)

4. The following is submitted:

To amend paragraph 6647 of the General Statutes of 1909 so as to read as follows:

"An information may, without leave, be amended in matter of substance or of form at any time before the defendant pleads.

"The information may, in the discretion of the court, be amended on the trial as to all matters of form, when the same can be done without prejudice to the substantial rights of the defendant.

"To prevent variance, the information may, by leave of court, be amended during trial upon such terms as will afford the accused reasonable notice and opportunity to make his defense, and after trial it may, either in the trial court or in the Supreme Court, be amended to conform to the proofs, where the variance was not expressly brought to the attention of the trial court when the evidence was offered and the trial proceeded without claim by the accused that he was not properly notified of the case actually made against him."

5a. We further present the following: to amend paragraph 6679 of the General Statutes of 1909 to read as follows:

"The indictment or information must contain: first, the title of the action, specifying the name of the court to which the indictment or information is presented and the names of the parties; second, a statement of so much of the facts constituting the offense in plain and concise language, without repetition, as shall give the defendant reasonable notice of the offense with which he is charged and of the case on the facts which will be made against him, setting out the facts constituting the alleged offense with sufficient exactness to support a plea of former conviction or acquittal, as the case may be."

To amend paragraph 6685 to correspond, as follows:

"Fourth, that the offense charged is sufficiently set forth in plain and concise language as to give the defendant reasonable information of the act or omission to be proved against him and to identify the transaction referred to with sufficient exactness to support a plea of former conviction or former acquittal, as the case may be; but it shall not be necessary for the indictment or information to set forth every element of the offense charged, but only so much detail of the circumstances as shall accomplish the purposes above set forth in this section."

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An information is sufficient which fulfills the following requirements:

1. Fair notice to the defendant of the nature of the charge and of the identity of the act or omission for which he is prosecuted.
2. Identification of the charge and of the acts or omissions sufficient to enable the accused to plead former acquittal or conviction in case of second prosecution.

"A chief object of reform of procedure, both criminal and civil," says the report of the Committee on Criminal Procedure to the American Institute of Criminal Law and Criminology, October, 1910, "must be to insure trial and review of the case rather than the record. The present practice amounts to record-worship. The reasons therefore are purely historical. Partly it is a remnant of the old mode of determining causes, so far as possible, by some arbitrary mechanical agency. Partly it had its origin in a just fear of fraud at a time when amendments could only be made by erasure of a parchment record, the reasons for which have been obsolete for centuries. Chiefly it grew out of the exigencies of the old mode of review by writ of error, now superseded in most jurisdictions by a more modern appeal. When review could only take place by inspection of the parchment record in a search for error, it was necessary that the indictment set out a complete case against the accused, disclosing every element of the crime, since the court of review could only know what was proved from what was averred. To-day causes may be and are reviewed on the case made at the trial. But we still continue to review the case made in the indictment also. Under modern conditions, the latter review serves no useful end. No cause which has been tried on evidence should be reviewed solely upon pleadings. If a case was made at the trial, the question should be whether the accused was fairly notified thereof, and had a fair opportunity to meet it and to present his own case, not whether the record would sustain a judgment at common law.

"Nor is a complete statement of all the elements of a crime necessary to permit the record to be used as the basis of a plea of former conviction or of former acquittal. If sufficient notice is afforded the accused, surely others who have reason to read the indictment will be able to perceive what was charged and tried. The better an indictment fulfills the purpose of notice to the accused, the more thoroughly it will meet the requirement of record upon which to maintain a defense of former conviction or of former acquittal. Perhaps no practice will do away entirely with the need of extrinsic evidence in such cases. Under the present practice it must be resorted to frequently.

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"Moreover it must not be forgotten that our present practice sometimes develops the formal office of the indictment, namely, the office of sustaining the judgment of conviction on paper at the expense of the chief substantial office, namely, the office of affording notice to the accused. This is often true in cases of statutory offense, where it is permissible to charge the offense in the very language of the statute. It is even more true in some jurisdictions where legislative zeal to insure conviction of offenders against certain statutes has provided for an indictment in general terms. The way to get rid of the difficulties growing out of the formal function of indictments is not through such impairment of their substantial function. As H. L. Stephen has put it, 'the prisoner should have notice of all the law and all the facts which would be cited against him.' But the question should be whether he had such notice. If he has, the function of the indictment is performed. The question then should be as to the case made at the trial. To-day there is no difficulty in showing an appellate tribunal exactly what that case was. We do not need an elaborate indictment to that end.

"Most jurisdictions to-day have penal codes or criminal codes. An indictment referring to the section on which it is founded followed by 'so much detail of the circumstances of the alleged crime as is sufficient to give the accused reasonable information as to the act or omission to be proved against him and to identify the transaction referred to' would accomplish every real purpose of criminal pleading."

Probably an amendment to the Bill of Rights will be required for the above statutory provision. The Bill of Rights requires that the accused be informed of "the nature and cause of the accusation against him." Whether this means notification of every element of the offense is a question of interpretation. If so, the following amendment to the Bill of Rights, section 10, is presented instead of the constitutional provision above:

"In all prosecutions, the accused shall be allowed to appear and defend in person or by counsel; be notified of so much of the nature and cause of the accusation against him as shall fairly enable him to prepare his defense, and be sufficient to form the basis of a plea of former conviction or former acquittal."

The rest of the section shall read as at present.

Your committee further reports that it has been unable to complete its investigation of the work as outlined in the committee report of 1911, namely:¹

1. Criminal procedure.
2. The organization of courts.

¹From this point we have the report as presented in January, 1912.

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3. The definition of crimes.

4. The human agencies employed to ascertain the guilt or innocence of the accused.

Your committee has been unable to investigate the criminal law and procedure of this state in the order indicated in its report of last year, but it has concerned itself with certain miscellaneous matters from which it has selected the following for report at this time:

1. Mistrials, due to the physical or legal incapacity of jurors, or to personal feeling between individuals in the jury room.

In addition to the three-fourths verdict advocated by some, your committee presents the following for consideration:

(a) In any criminal case, the court, upon his own motion, or upon the motion of either party, may order fourteen jurors to be impaneled to try the cause, of which number the first twelve persons accepted shall consider and render a verdict, unless before verdict returned and accepted one or more of the twelve shall, in the judgment of the court upon showing made, become incapacitated by sickness, or unsoundness of mind, die, or be found to be disqualified by law because of circumstances occurring before or during trial, in which event the place of such incapacitated juror shall be filled from the two remaining jurors, who shall also have been sitting and hearing the cause, and such jurors shall be taken to fill such vacancies in the order in which they were accepted.

The above provision, however, does not avoid mistrials because of personal feeling between jurors, and your committee suggests the following:

(b) That a jury of fourteen be impaneled to try the cause, any twelve of whom may sign and return a verdict.

2. The time of appeal in criminal cases shall be changed from two years to one year, so that the present paragraph 6858 of the General Statutes of 1909 shall read as follows:

"The appeal must be taken within one year after the judgment is rendered, and the transcript must be filed within thirty days after the appeal is taken."

3. Provision should be made whereby the state or municipality may institute a civil suit to recover an amount equal to the fine that might be assessed for offenses punishable by fine only. The action should be known as "a suit for a civil penalty," and the offender brought into court by a simple citation to show cause why judgment should not be pronounced against him for the cause stated.

The person thus cited should be required to plead all his defenses,

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and be held to have waived those not plead, except, of course, those constitutional rights not within the power of any individual to waive.

It should further be provided that the plaintiff might dismiss before trial and proceed under the criminal procedure, but judgment in the "suit for a civil penalty" should bar the criminal action.

The following advantages of such proceedings occur to your committee:

First. Offenders may often be induced to pay the penalty without other proceedings and yet may be deterred from future infractions of the same law. The police laws of the state are often broken through ignorance of the existence of the particular law in question, but if the offender is arrested he is tempted to resist conviction because of the stigma resulting therefrom. An additional argument may be found in the fact that a civil proceeding will destroy the stock appeal to the jury in a criminal case, that the jury should not "attach the smell of jail" to a person of good reputation.

Second. It may succeed in securing conviction by a "preponderance of the evidence" instead of "beyond a reasonable doubt." Upon this point there seems to be a division of the authorities, but the following cases hold that a civil suit for a penalty is not in the nature of a criminal proceeding:

Mitchell v. State of Nebraska, 11 N. W. 848; *Fein v. U. S.*, 1 Wyo. 246; *Comm. v. Sherman* (Ky.), 4 S. W. 790; 1 Bishop on Crim. Law 43.

Third. Care would of course have to be taken to bring the provisions within the rule laid down in the above cases if it is desired to make the suit for a "civil penalty" a civil suit as a matter of law, but it is possible to do so, granting, of course, that the above cases state the better rule.

Prosecutions under the criminal law would not be abolished, so that the objection that a civil penalty suit would not deter certain individuals from the commission of forbidden acts because the stigma of a criminal prosecution has been removed, would not prevent the state from prosecuting a criminal action instead.

Fourth. Your committee is informed that the legislature of 1903 adopted a resolution to submit a constitutional amendment providing for the impaneling of a jury from citizens outside of the county, but that this was not submitted at the time fixed by the resolution, for the reason that the Secretary of State found some flaw in the proceedings. Your committee recommends, therefore, that the Attorney-General be requested to investigate the matter with the view of compelling the submission of the amendment for adoption.

WILLIAM E. HIGGINS

Fifth. The change of venue from one county to another within the district should be allowed to the state where it is made to appear to the trial court that it is doubtful if a jury can be obtained in the county where the prosecution was brought.

Sixth. No person shall be disqualified as a witness in any criminal action or proceeding by reason of his conviction of a crime; but such conviction may be shown for the purpose of affecting his credibility.

Seventh. The rule in civil cases, as provided in paragraph 5872, General Statutes of Kansas, 1909, should be extended to criminal cases so that questions of law arising in the case may be decided by the court or judge in advance of the trial.

Eighth. We favor the rule that all pleas in abatement, except the determination of the fact of insanity, should be tried by the court.

Ninth. We submit for discussion the question of the extension of the inquisitorial powers of the county attorney in matters concerning:

(a) Gambling; (b) Anti-trust violations; (c) All criminal offenses.

Tenth. Your committee further states that it has concerned itself with the following question:

Is it possible to classify and denominate offenses in such a way that the charge of one offense may render possible the determination of the existence of another, or others?

By practice in this state, under the charge of murder it is possible to establish the ingredients of assault with intent to kill, or of simple assault. Petty larceny is included within grand larceny. May it not be possible to devise a system of definition and classification wherein many of the offenses will differ from others in the possession of elements or ingredients additional to those included in others, so that the charge of one having the greatest number of the ingredients would allow conviction of that offense which consists of the ingredients shown by the proof? By means of this classification the charge would be specific, would notify the defendant of the case on the facts and allow his conviction of that offense of which he was really guilty. Your committee has already discussed this question in relation to the following:

1. Offenses involving injuries to the person.
2. Crimes involving the sex relation, such as forcible and statutory rape, incest and seduction.
3. The unlawful deprivation of property.

Under such a classification, it would be possible to prosecute a number of offenses in one information and under one charge, the nature

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of the offense depending upon the successive elements eliminated by failure of proof and upon the establishment of those remaining.

Eleventh. In conclusion, your committee states that the elimination of errors and the improvement of the law and procedure is to be obtained only after careful investigation. It therefore recommends that the committee be continued for further work.

CRIMINAL PROCEDURE IN CANADA.¹

WILLIAM RENWICK RIDDELL.

At the conquest of Canada by the British, 1759-60, the English Criminal Law was introduced by the conquerors, although with the exception of a few years, the French-Canadians were permitted to retain their own law in civil matters. The English criminal law continued to prevail except as modified by provincial statutes—and these statutes in general closely followed the legislation in the mother country. This statement also applies to the Provinces of Nova Scotia and New Brunswick. Accordingly, at Confederation in 1867 the criminal law of all the confederating colonies was almost identical—while the civil law of Lower Canada (Quebec) was markedly different from that of Upper Canada (Ontario), Nova Scotia and New Brunswick, the Lower Canadian law being based upon the Custom of Paris and ultimately upon the civil law of Rome; while that of the others was based upon the Common Law of England. Accordingly the British America Act, which created (1867) the Dominion of Canada, gave to the Parliament of the Dominion jurisdiction over the criminal law, including the procedure in criminal matters. The Provinces, however, retained jurisdiction over the constitution of the Courts of Criminal Jurisdiction as well as over property and civil rights.

For some years there were statutes passed from time to time amending the criminal law, and at length Sir John Thompson, who had been himself a judge in Nova Scotia and had become Prime Minister of Canada, brought about a codification of criminal law and procedure. He received valuable assistance from lawyers on both sides of the House and the Criminal Code of 1892 became law. This with a few amendments made from time to time is still in force.

The distinction between felony and misdemeanor has been abolished, and offences which are the subject of indictment are "indictable offences." And offences not the subject of an indictment are called "offences" simply. Certain offences of a minor character are triable before one or two Justices of the Peace as provided by the Code in each case. In such cases there is an appeal from a magistrate's decision ad-

¹A paper prepared for the New York State Bar Association, January, 1912, at their request.

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verse to the accused to the County Court Judge both on law and fact; or the conviction may be brought up on certiorari to the High Court on matter of law.

Cases triable before Justices of the Peace, as, for example (583), resisting the execution of certain warrants (584), persuading or assisting an enlisted man to desert (s. 104), challenging to fight a prize fight or (s. 105) fighting one or (s. 106) being present thereat (s. 118), carrying pistols (s. 119), selling pistols or air guns to minors under 16 (s. 122), pointing pistols (s. 374), stealing shrubs of small value (s. 385), injuring Indian graves (s. 431), buying junk from children under 16, etc., etc.

But offences of a higher degree are indictable.

If a crime, say of theft, is charged against anyone, upon information before a Justice of the Peace, a summons or warrant is issued—and the accused brought before the Justice of the Peace. In some cases he is arrested and brought before the Magistrate without summons or warrant; but then an information is drawn up and sworn to. The Justices of the Peace are appointed by the Provincial Government, and are not as a rule lawyers.

Upon appearance before the Justice of the Peace, he proceeds to inquire into the matters charged against the accused; he causes witnesses to be summoned, and hears in presence of the accused all that is adduced. The accused has the fullest right of having Counsel and of cross-examination, as well as producing any witness and having such evidence heard in his behalf as he can procure. All the depositions are taken down in shorthand or otherwise, and if in longhand, signed by the deponent after being read over to him.

After all the evidence for the prosecution is in, the Magistrate may allow argument, or he may *proprio motu* hold that no case has been made out—in which case the accused is discharged—or he may read over aloud all the evidence again (unless the accused expressly dispenses with such reading) and address the accused warning him that he is not obliged to say anything, but that anything he does say will be taken down and may be given in evidence against him at his trial, and asks, "Having heard the evidence, do you wish to say anything in answer to the charge?" Then, if desired by the accused, the defence evidence is called. If at the close of the evidence the Magistrate is of opinion no case is made out, he discharges the prisoner, but the accused may demand that he (the accuser) be bound over to prefer an indictment at the Court at which the accused would have been tried if the Magistrate had committed him. If a case is made out, the accused is committed

for trial with or without bail as seems just, the witnesses being bound over to give evidence.

Police Magistrates, who are generally barristers, are appointed for most cities and towns; these have a rather higher jurisdiction than the ordinary Justice of the Peace, in some cases with the consent of the accused.

The Courts which proceed by indictment are the High Court (Supreme Court of the Province) and the General or Quarter Sessions. Judges of these Courts are appointed by the Crown (i. e., the Administration at Ottawa) for life, and must be barristers of ten years' standing.

The High Court can try any indictable offense; the Sessions cannot try treason and treasonable offences, taking, etc., oaths to commit crime, piracy, corruption of officers, etc., murder, attempts and threats to murder, rape, libel, combinations in restraint of trade, bribery, personation, etc., under the Dominion Elections Act.

Within twenty-four hours of committal to gaol of any person charged with any offence which the Sessions could try, the Sheriff must notify the County Court Judge, who acts as Judge in the Sessions, and with as little delay as possible the accused is brought before the Judge. The Judge reads the depositions and tells the prisoner what he is charged with, and that he has the option of being tried forthwith before him without a jury or being tried by a jury. If the former course is chosen, a simple charge is drawn up, a day fixed for the trial and the case then disposed of.

If a jury be chosen, at the Sessions or the High Court (Assizes), a bill of indictment is laid before a Grand Jury (in Ontario of 13 persons) by a Barrister appointed by the Provincial Government for that purpose. The indictment may be in popular language without technical averment, it may describe the offence in the language of the Statute or in any words sufficient to give the accused notice of the offence with which he is charged. Forms are given in the Statute, which may be followed. Here is a sample:

"The Jurors for Our Lord the King present that John Smith murdered Henry Jones at Toronto on February 13th, A. D. 1912."

No bill can be laid before the Grand Jury by the Crown Counsel (without the leave of the Court) for any offence, except such as are disclosed in the depositions before the Magistrate. But sometimes the Court will allow other indictments to be laid. The Grand Jury has no power to cause any indictments to be drawn up.

Upon a true bill being found, the accused is arraigned; if he pleads

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"Not Guilty" the trial proceeds. He has 20 peremptory challenges in capital cases: 12 if for an offence punishable with more than five years' imprisonment, and four in all other cases—the Crown has four, but may cause any number to stand aside until all the jurors have been called. I have never in 30 years' experience seen it take more than half an hour to get a jury even in a murder case—and I have never but once heard a jurymen asked a question.

In case of conviction, the prisoner may ask a case upon any question of law to be reserved for the Court of Appeal, or the Judge may do that *proprio motu*. The Court of Appeal may also direct a new trial upon the ground that the verdict is against evidence; but I have never known that to be done.

No conviction can be set aside or new trial ordered, even though some evidence was improperly admitted or rejected or something was done at the trial not according to law or some misdirection given, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage was thereby occasioned at the trial. If the Court of Appeal is unanimous, against the prisoner, there is no further appeal, but if the Court is divided, a further appeal may be taken to the Supreme Court of Canada. I have never known this to be done.

A wife or husband is a competent witness in all cases for an accused. He or she is compellable as a witness for the prosecution in offences against morality, seduction, neglect of those in one's charge and many others. The accused is also competent, but not compellable in all cases. If an accused does not testify in his own behalf, no comment can be made upon the fact by prosecuting Counsel or the Judge.

No more than five experts are allowed on each side. I have never known a murder case (except one) take four days—most do not take two, even with medical experts.

THE RECENT FEDERAL CENSUS OF PRISONERS.

JOSEPH A. HILL.

A statement recently issued by the Bureau of the Census gives the total number of sentenced prisoners confined in prisons and jails on January 1, 1910, as 113,579; and the number committed to prisons or jails during the calendar year 1910 as 479,763. The Bureau fully recognizes that without further analysis these totals, published in advance of the complete report, possess no value as a measure of criminality, since they include every degree and variety of offense from disorderly conduct to murder in the first degree. But when the returns have been classified by nature of offense, by duration and character of sentence, by sex, age, and nativity of the offender, as they will be in the final report, they will constitute a valuable source of information regarding crime and criminal classes. This will be particularly true of the returns of commitments; for these returns when classified and analyzed will furnish an accurate measure of the crime which was detected and punished during the year 1910 exclusive of those minor offenses which are punished by fines without imprisonment.

This is the second time that the Bureau of the Census has compiled complete statistics relative to the prisoners committed during one year, the first compilation of this sort being that made in connection with the prison census of 1904. Prior to that census, federal prison statistics related almost exclusively to the prison population, or the number of prisoners present on a given day. Statistics of prison population are, however, of little value as an indication of the criminality of any community, because they afford no measure of the number of crimes or offenses punished within any fixed period of time. They are, moreover, misleading as regards the relative number of serious and petty offenses, since owing to the accumulation of long term prisoners, committed for serious offenses during an indefinite period prior to the date of the census, the proportion of serious offenders in the prison population necessarily greatly exceeds the proportion of such offenders in the total number of those sentenced during any given period. For instance, as regards a crime punished by five years' imprisonment, the enumeration of prisoners on a given day includes the accumulation of commitments for the previous five years, but as regards an offense punished by ten days' imprisonment, the prison population includes only the accumulation of the preceding ten days.

It is the statistics of prison population to which Professor Robinson refers in his review of federal criminal statistics when he says: "These

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statistics have passed among the general public for much more than their true worth. In reality they tell little or nothing of criminality in the United States."¹ This criticism, however, does not apply to the federal census of prisoners considered as a whole in its present stage of development. In fact, the defective and unsatisfactory character of statistics of prison population as a measure or even an indication of the frequency and prevalence of crime was long since recognized by those who were responsible for the organization and conduct of this branch of the work of the Census Bureau. Accordingly when the last previous census of prisoners was taken in 1904 the range of the work was extended to include data relative to the commitments occurring within a period of one year; and the larger part of the report presenting the results of that census was devoted to an analysis of these data. The statistics relative to the prison population on a given day were relegated to a position of secondary importance, although they were retained as furnishing the only basis of comparison with prior censuses and as having a certain value in themselves.

Mention may be made of one or two new features in the administrative organization of the prison census. The returns are usually obtained from some officer or employe of the prison or jail, who, for this purpose, is commissioned as a special agent of the Census Bureau. In 1904 the return of prison population was made at the beginning of the year on a sheet schedule with a line for each prisoner enumerated, and a similar schedule was used in making the report of commitments during the year, the return being made at the end of the year. At the census of 1910, however, the returns of commitments were made on individual cards, one card, that is, for each prisoner sentenced, and the cards were sent in to the Census Bureau every month. There is no doubt that this change has contributed greatly towards making the census of prisoners more complete and accurate than it was before.

The details asked for as regards prisoners committed included the following data: (1) Name of prisoner; (2) Date of commitment; (3) Sex; (4) Race; (5) Age; (6) Marital condition; (7) Country of birth, (a) of prisoner himself, (b) of prisoner's father, (c) of prisoner's mother; (8) Years in the United States (for prisoners of foreign birth); (9) Ability to speak English, and language spoken if not English; (10) Ability to read and write; (11) Occupation before commitment; (12) Offense for which committed; (13) Nature of sentence; (14) Term of sentence; (15) Amount of fine.

The recent prison census is believed to represent a distinct advance as compared with the preceding census in one or two other particulars.

¹Louis N. Robinson: *History and Organization of Criminal Statistics in the United States*. P. 37.

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One very important improvement results merely from the change in the date of the prison census to make it coincide with the decennial year in which the general population census is taken. This should perhaps be referred to as a return to the earlier practice which was unwisely departed from in the case of the prison census of 1904. As regards the censuses prior to that of 1904, however, synchronism of the prison with the general population census was, in fact, of small advantage, since the data obtained at the prison census did not afford any adequate basis for significant comparisons. The great advantage now of having the prison census cover the same year as the general population census is that the classification of the prisoners sentenced during that year by age, sex, nativity, etc., can be compared with the corresponding classification of the general population, thus affording a basis for computing rates showing the ratio which the total number of sentenced prisoners in a given age, sex, and nativity class bears to the total number of persons in the same class. In the 1904 report on prisoners the only rates that it was deemed practicable to present were those based on the total estimated population classified by sex. That is to say, the report in this respect went no further than to show the ratio which the number of prisoners of each sex committed for all offenses or for a given class of offenses bore to the total estimated population of the same sex.

To have gone further than this and have undertaken to compute ratios for age and nativity classes on the basis of an estimated classification of an estimated population would have involved too great an element of uncertainty to warrant any safe and definite conclusions. Four years had elapsed since the last previous general population census and the influence of immigration alone had no doubt effected material but incalculable changes in the composition of the population as determined by age, nativity and race. As regards the recent prison census, however, we have as a basis for ratios the population actually enumerated in the same year and tabulated and classified for the purposes of the general population census. This circumstance will add very materially to the value and significance of the statistics of commitments. It will be possible, for instance, to ascertain what proportion of Italian immigrants of a given age class were sentenced to prisons or jails for a specified offense or class of offenses during the year 1910, and to compare this with the proportions shown for other classes of immigrants or for the native population. This ought to throw some light upon the relative criminality of the various elements of our composite population, a subject in which there is naturally and properly a profound popular interest.

Another point of difference in the recent prison census as compared with the previous one is the inclusion of prisoners committed for non-

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payment of fine. This class, it is true, was included in the prison population census of 1890; but in 1904 it was omitted on the ground that there was no record of those fines which did not result in imprisonment, so that the statistics would be only a partial presentation of facts as to finable offenses. Further consideration of the question, however, resulted in the conviction that it was better to include this class so that the record of the movement of prison population might be complete. In the final tabulation the cases of imprisonment for non-payment of fines will be segregated and, therefore, will not complicate comparisons with the prior census, which as just stated did not include such cases.

Another new feature of the present census will be the statistics relative to the prisoners discharged or dying during the year. The attempt made to secure these statistics in 1904 was not successful, but this time the record will be practically complete.

When the tabulation of the 1910 data is completed we shall have for the first time some basis for determining the increase or decrease from one census to another in the volume of punished crime; for as regards the number of prisoners sentenced to imprisonment for a given crime or class of crimes we can compare the record of the years 1904 and 1910. On the assumption that the ratio of crime punished to crimes committed has undergone no material change, the comparison will at the same time afford some indication of changes in actual criminality. Of course all such comparisons will have to be made with caution and with due allowance for disturbing factors. Probably the assumption of an unchanging ratio of crime punished to crime committed is less doubtful in case of the graver crimes than it is for the minor offenses and misdemeanors. But the graver crimes are the ones which are the most significant as a measure of the degree of criminality or lawlessness prevalent in the community.

There is then a fair prospect at this census of achieving results beyond those hitherto attained in the field of federal criminal statistics, by producing a report which, taken in connection with the report of the preceding census, will throw much light upon the movement of crime and its relative prevalence in different communities and different classes of population. Congress, however, has not felt justified in appropriating for the Census Bureau a sum sufficient to permit of the continuation of this branch of the work. The schedules of the census of prisoners had practically all been received and the work of checking and verifying them preparatory to tabulation was well under way. But the work has now been stopped. It is presumed that ultimately means will be provided for completing a work of such popular interest. Nevertheless delay means loss of effectiveness and accuracy.

THE PAYMENT OF PRISONERS.

F. EMORY LYON.

That the problem of prison labor has nowhere reached a satisfactory solution is apparent to every thoughtful student of the subject. That experiments in plenty have been made in this direction is obvious. The various methods that have been pursued are fairly familiar to the readers of this journal. Solitary shop work, leasing of prisoners, the contract system, employment by the state, road making—all have had their history of indifferent success.

It is not the purpose of this article to discuss the relative merits and defects of these various methods of prison labor. It is rather to raise the more fundamental question as to whether unpaid penal servitude is justifiable on ethical, civic, or industrial grounds. In the past progress of prison reform, slight attention has been given to the essential justice of the assumption that the delinquent has forfeited his industrial status. Only the occasional idealist has ventured to voice a protest, as in the words of W. D. Howells: "The state sets the prisoner a thief's example by stealing his wages, and confiscating the prisoner's earnings." This "jolt" from the ethereal world has, however, gradually awakened renewed discussion and taken form in laws and demonstrations of a better way that amounts to a new awakening.

Naturally the trend of prison reform in an industrial age moves in that direction. Reformation by discipline has marked the first great step in the transformation of the modern prison system. Education and economic efficiency are destined to characterize the great advancement of the future. Already the industrial ideal prevails over the military. More and more it has been seen that reformation itself could not come by moral suasion merely, or even by control and discipline alone.

It is realized that in teaching the lesson of life, those who are delinquent must be taught to do the things that are taught in a normal society. Hence most reformatories and some prisons in America have undertaken the teaching of trades. They have introduced such manual and mechanical training as will tend to prepare the individual for society. The chief purpose of such training has been to teach the lesson of thrift and the unselfish maintenance of others. One of the chief motives of toil, however, has been lacking in the prison systems of the past, because of the relation of virtual vassalage which prisoners have borne to the

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state. Hence, the serious question as to whether the state could, as a wise and practical measure, compensate the inmates of its penal institutions for their labor.

In approaching this subject, I venture to say we have in this question one of the most complex and complicated problems in the realm of penological science. At the present time there is the widest variance of opinion as to whether prisoners should receive anything for their labor. There is still wider divergence in practice and in the laws of the different states of the union governing the subject. There is apparently little difference of opinion as to the fundamental wrong involved in the suffering of innocent dependents while the offender against the law is being punished or corrected. Notwithstanding this fact the simplest investigation of the subject speedily discovers serious legislative, administrative, industrial and social difficulties in the way of putting the principle into practice. However, it is believed these should not be unsurmountable if it can be demonstrated that great good to society would be the result.

A questionnaire sent to 25 representative American wardens disclosed the fact that more than one-half of them believe in the principle of paying prisoners for their labor. In the same way it was revealed that in nearly or quite two-thirds of the institutions reporting, some sort of remuneration is already given to the inmates. The widest range exists, however, between the large amounts paid by contractors to a few prisoners for overtime work, and the comparatively insignificant sums paid to all prisoners in some states. In no case reporting had discrimination been made in favor of prisoners having families to support. A good deal of uncertainty exists as to the number of prisoners having relatives dependent upon them. In many institutions statistics are not kept and in others the statements made by inmates concerning their domestic obligations are not considered reliable. So far as could be discovered, however, the estimated percentages run all the way from 8 to 90 per cent. A fair average would probably indicate that about 25 per cent of all prisoners had been contributing some measure of support to others previous to incarceration, but that fully 50 per cent are in reality under moral obligation to kindred of some kind.

As to the abstract question from the ethical standpoint there is undoubtedly a growing feeling that the practice of unpaid penal servitude is without justification. The chief remaining argument in its favor may be that the state gives value received by its training and preparation for good citizenship. But where punishment is still regarded as the primary object of imprisonment no compensation is afforded. On the other hand, the assertion has been made that it would be double punishment

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for prisoners to be deprived of liberty and at the same time be compelled to give their earnings to the support of others or to make restitution for the offense. Whether the payment of prisoners would be a double burden on society depends largely upon the use made of these earnings. If these earnings were actually used to prevent families of prisoners from becoming public dependents there is no doubt that it would be a measure of economy for the state.

The chief objection to the plan under discussion has been the great cost that a general application of it would entail upon the state. The popular impression is that the total earnings of prisoners would amount to more than the cost of their maintenance in penal institutions. But this is far from being true, when the cost of administration is included. Only a few prisons of the country have in recent years returned to the state any profit from the industries of the institutions. The self-supporting ones have usually shown the least desirable results from the standpoint of reformation. In most other cases the income has not been sufficient to pay the entire expense of keeping the prisoners and caring for them. Where the purpose of the states has been more than custodial and included the training and reformation of the inmates, an appropriation has invariably been necessary to carry on these objects. Nevertheless, several of the states have undertaken to pay prisoners in a small way. In most cases the amount paid ranges from one dollar to three dollars per month, but not a sufficient amount to be of service in supporting families of prisoners.

When we turn to other countries we find a very similar situation. Most countries give some small dole to prisoners, but very few, if any, have seriously approached the subject with a view to solving the problem on a just economic basis. This was shown in several papers prepared by European delegates to the recent International Prison Congress and which it was my duty to review before that meeting. A brief summary of the arguments for and against the payment of prisoners may be of interest here. Among the various objections to the principle of remuneration for offenders as presented in these papers, the following may be stated:

First, the state may by right exact not only deprivation of liberty, but the deprivation of earning capacity as punishment for crime.

Second, free labor in good standing would object to being placed on an economic equality with the offender.

Third, in so far as knowledge of others' sufferings is a deterrent, provision for prisoners' families would tend to lessen the burden of responsibility, should future depredations be contemplated.

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Fourth, even though the principle of paying prisoners be conceded as desirable, still the cost of maintenance and penal administration is too great to permit of an over-plus for this purpose.

None of these apparent obstacles, however, are sufficient to silence the humanitarian voice of civilization which cries aloud for the solution of every problem of injustice. Prompted by this voice, therefore, we find in these reports certain affirmative declarations of faith:

First, the innocent should not be allowed to suffer for the defection of the guilty. The burden of their need should if possible be borne by the offender, otherwise society as the protector of its weaker members is given the responsibility either through taxation, or by voluntary benevolence.

Second, the family is the primary unit of society. Its integrity must be maintained at all costs. Any treatment of the prisoner which tends to disintegrate the family contributes toward social suicide. Every effort should be made by the state to hold intact all ties of domestic accord and social sympathy that have been strained by the offender's unworthy conduct.

Third, the safety of the state and social honor are at stake in the solution of this question. Indigence and pauperism created by the misdirection of labor from its legitimate purpose is a menace to government and it is discreditable for highly organized states to be indifferent to the welfare of any subject, a few of which have fallen beneath the machinery necessary to a survival of the whole.

Fourth, as a matter of abstract justice, it is not sufficient that modern legislation has absolved the kindred of the convict. In taking away and appropriating the means of support, it has, in effect, committed an overt act of retaliation against the innocent.

As reviewer of these papers I presented the following resolution for the consideration of the Congress:

RESOLVED: 1. That all political influences and considerations be eliminated from the conduct of penal institutions, and their administration be kept solely upon a business basis, with a view to lessening expenses.

2. That no private contract be permitted in any prison or reformatory, but that all industries be established and conducted by the state: either in the manufacture of articles needed by various branches of the commonwealth, or to be sold at the market value of similar products from private concerns.

3. That prisoners should be paid according to their industry. The amount thus allowed should be administered for them, to support dependents, and to provide a fund for rehabilitation after release.

4. For the present it does not seem practicable for the state to carry out the full program of relief. Until that ideal may become practicable, it is advisable that committees of patronage and prisoners' aid societies should be the chief distributors of the relief for the states, and furnish the same when not otherwise supplied.

5. In view of the far-reaching importance of these measures and the practical difficulties involved, it is recommended that fuller information be

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invited from the respective governments represented, and that further consideration be given to the subject at the next Congress.

After a thorough discussion of this resolution it was deemed advisable to present the subject in simpler form, recognizing the principle of payment for prisoners without specifying methods. Accordingly the following resolution was presented to the General Session and unanimously adopted as the sense of the Congress:

RESOLVED: It is desirable that the state should allow payment to be made to prisoners and that steps should be taken to provide that any sum of money credited to prisoners should be available for the assistance of their families if in need.

As the practice in different countries varies considerably, it would be an advantage if fuller information could be placed at the disposal of the next Congress with the view to further discussion as to the best means to adopt for the relief of the families of prisoners.

Thus we find the movement fairly launched for world-wide discussion, and to be seriously discussed until solved. In the meantime, however, the problem appears to be passing beyond the academic stage into that of practical demonstration. In several cities and states arguments are being answered by facts—the most potent of all rejoinders.

In Washington, D. C., prisoners who fail under probation are employed at the workhouse at 50 cents per day, the same going directly to their dependents. Inmates of the Detroit House of Correction are paid for their labor without reference to domestic ties, and nearly all have sufficient to start life anew after release.

The States of Minnesota, Kentucky, California and others are putting into practical use recently adopted measures providing for the payment of prisoners.

Thus far these experiments have elicited only favorable reports. It is significant that no serious objection has been made to them by labor federations that have so strongly protested against the contract system.

The objection of the legislator is heard that if the families of prisoners are provided for, he will next be called upon to meet the needs of all wards of the state, and their kindred. But he should see that while the insane patient, for example, is being treated and contributing nothing in return, the prisoner is costing little, and giving much in toil to the state.

It may one day dawn upon the taxpayer also that society is pursuing a shortsighted policy by the present method. No reliable statistics are available to show the number of prisoners' dependents thrown upon public or private charity. Neither can one estimate accurately the enormous loss to society by the idleness of prisoners in county jails, and many city institutions, not to speak of the opportunity which every

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repentant prisoner desires, to make restitution to his victim. We only know that here is wicked waste, instead of conservation, and finally, none can say, though the future will reveal, what shall be the quickening influence of granting just compensation to the prisoner.

At this point it is hardly to be expected that the prisoner would object to compensation for his labor. In fact, a few have expressed themselves on this question of vital interest. From these expressions given herewith, it will be seen that the issue is one, not of economics alone, but of human character as well.

This by way of internal evidence, quoted from a prison paper :

"Nothing would be better than such a law. If the prisoner were paid a reasonable wage, the expense of his board, clothes and all other expenses incident to his care could be deducted and the balance be laid aside to his credit. Or in the case of the married prisoner, his earnings could be given to those dependent on him for support. Compulsory labor without remuneration deprives a man of individuality by likening him to a machine. The man who is paid for his work will take an interest in it and feel a certain pride in turning out a higher grade of work than will his neighbor who labors for his board, clothes, and a bad night's rest. We have spoken of the married man, but what about the single man? The chief reason advanced for refusing to pay him wages is that he will squander it for drink when he is released. If he does this, it is in itself glaring proof that his prison experience has worked him no good—an admission of the inefficacy of penitentiary methods. But there are many who would not spend this money for the gratification of an unquenchable thirst, and they should receive some consideration."

Another statement of the case by the prisoner :

"If some method could be found whereby the enormous economic loss to the State, under present penal methods, could be avoided or lessened, it would solve a portion of the present difficulty. Restraint, confinement of some sort, is an admitted necessity under our present sociologic outlook, but neither the restraint nor the confinement necessitates the present economic loss. Look at it for a moment. A mechanic is earning good wages upon which he supports wife and children; he makes some mistake—commits some crime, if you will—when the State steps in, shuts him in some prison, spends seventy-five cents per day to prevent his earning support for wife and babies, while those dependent beg or starve. Net loss to the State in dollars and cents—the loss of the man's time and product, plus the cost of maintenance and guardianship—in round figures \$3.00 per day, \$1,000 per year. But by

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far the greater loss is in a family forced from their independent position as producers, as contributors to the State's wealth, unto the line of dependent consumers, sapping the economic vitality of the State, destroying their own sense of responsibility. It is not one life ruined, it is a half dozen lives. Surely there is some method better for the State, better for the individual."

"WHERE PRISONERS ARE TRUSTED."

W. E. COLLETT.

Under the above caption appears an editorial in the Chicago Daily Tribune, August 7, 1911, as follows:

"For several years there has been a system of trust and honor pursued toward the prisoners in the Colorado penitentiaries. The state uses them as laborers in building and repairing roads and a number of fine highways has been constructed by this means. Sometimes as many as a hundred are in camp miles away from the prison for weeks at a time. The guards are not armed. The men work eight hours a day, and after supper they go swimming, play ball, and take walks in the mountains."

At the invitation of the managing editor of the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, the following additional facts are submitted:

On May 12, 1908, Warden John Cleghorn shipped eighty men from the penitentiary at Canon City to a construction road camp in the foothills between Trinidad and the New Mexico line, about 150 miles from the prison. The camp had been prepared by ten "trusties," under the direction of one prison officer. This gave the camp a population of 90 prisoners, in addition to the "captain" in charge of the camp and two other officers who acted as overseers of the road construction.

These prisoners ate and slept in tents. There were no armed guards; there was no stockade of any kind; nor had a fence been built around the group of tents.

Similar "prison road camps" had in recent years been established in various parts of New Mexico. The experience in the territory had inspired the prison authorities and a few other public-spirited citizens of Colorado to urge the experiment of building public highways in this State with the labor of "trusty" prisoners. The Sixteenth General Assembly had timidly appropriated \$10,000 for the experiment, and the equipment of horses, mules, wagons, scrapers, tools, tents, etc., cost approximately one-half of the amount.

So uncertain was the public sentiment at large that the authorities reluctantly gave forth any information as to the motive for moving so large a percentage of the penitentiary population when eighty prisoners

W. E. COLLETT

were put aboard a train. But in a short time work was progressing so splendidly that illustrated "write-ups" in the daily papers of the State assured the people that "convict" road building in Colorado had already passed the experimental stage.

It was in September of that year that the writer spent an entire day at the camp. The arrangements and management of the camp were all that could be desired in the matters of sanitation and discipline. As the General Secretary of the Prison Association, the writer was known to every prisoner in camp. After the captain had gone over the road for some distance and had explained the plans and details of construction, he gave permission to converse with prisoners, either at camp or on the road. Everywhere one saw evidences of contentment. Oh, the men were counting the days which stood between them and parole; they were anxious about their homes; they were eager to be with their loved ones again. But the comparative freedom of the camp life, together with the interest felt in doing work worth while, contrasted so broadly with life and dull routine within prison walls that the joy of these convicts was all but hilarious. Again and again the men would salute and call out, "Well, what do you think of our work, Mr. Collett?" Had they been expecting to clip coupons on profits from operating the road which they were building, they could scarcely have shown more interest in their labor.

And yet their only remuneration, in addition to the liberty of the road camp, is a generous special allowance of "good time," enabling them to make parole more quickly.

The State has wisely remembered that these prisoners are as human as any of us, and therefore susceptible to the influence of reward. All prisoners who work without the prison walls are known as "trusties"; and under a special law enacted two years ago they are entitled to ten days' "good time," in addition to the "statutory" good time, for every thirty days of good conduct, which embraces efficient work as well as conformity to general rules and regulations.

Of course the "maintenance" expense for prisoners in camp is greater than for those within the prison walls. It has been clearly demonstrated that these "trusty" prisoners engaged in road-building do as much work each day, and do it as well, as the laborers in a general construction camp; and this means that they consume more food than when they are in the prison; they wear out clothing more rapidly, and the expense of maintaining horses, mules and implements is a very considerable item. But the results are worth it all, for every reason.

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More complete information on this subject of road-building by the convicts of Colorado is furnished in the Seventeenth Biennial Report of the Colorado State Penitentiary. In his report Warden Thomas J. Tynan says:

"They (the convicts who work on public highways) have been employed chiefly in building highways in Las Animas, El Paso, Pueblo and Fremont counties, where an average of 104 men have worked for 610 days. They have built fifty miles of good roadway, some of which has been driven through most difficult formations in the rocky foothills and mountainous regions of the State, where a road could not have been built with free labor for less than twenty-five thousand (\$25,000) dollars per mile in some sections. Twenty miles were blasted out of solid rock. The tables which I append show that the work was done at a total cost of only fifty-six thousand seven hundred (\$56,700) dollars to the taxpayers (outside of the inevitable cost of prison maintenance), and this includes the salaries of ten overseers, the feed for teams and the purchase of \$3,788 worth of horses, tools and equipment that now belong to the State. The cost of the road would have been \$212,160 with free labor by contractors. Therefore, we figure that on this item alone our prisoners have returned at least \$155,460 to the State.

"With regard to the selection of convicts for road and ranch work, I insist that this selection should not be governed by length of sentence or nature of the crime. My experience has absolutely disproved the accepted theory that 'only short-time men' can be trusted with this large measure of liberty. At present I am working eight 'life-timers' away from the prison, their words of honor the only guard. In every camp, on every ranch, there are 'long-sentence' men, the type hitherto known as 'desperate criminals.' As a matter of fact, I find this kind—the strong characters of crime—much more susceptible to fair appeal than the petty, jelly-back offender. My real trouble is with the 'hoboes,' who are always short-time men.

"The value of road-building to the State has been proven, and its benefit to the convicts fully attested. Not only have splendid highways been shot through regions hitherto almost inaccessible, but many men, under skilled overseers, have been taught scientific road-building in all its branches from simple scraping to hard rock work. As in the case of the proposed farm, road-building likewise gives the released convict a fair chance to work honestly and prosperously in the open air.

"In order that the State and penitentiary may equally enjoy the fullest possibilities of this released energy, I would suggest a change from

the present plan. As it is now, our road men are scattered here and there in small camps, working on this and that county road. The arrangement not only prevents the use of the largest possible number of men, but falls short of the best possible results. I would suggest that the legislature be asked to consider the matter of appropriations for state highways large enough to cover the entire biennial period.

"Great highways, stretching from border to border, would be permanent improvements, rich in benefit to the whole people. And such work, by permitting large camps and centralization of men, would allow the use of twice the present number. On a State highway, backed by adequate appropriation, we could keep three hundred men employed throughout the biennial period and give Colorado those great arteries necessary to fuller life.

"The highway to the top of the Royal Gorge deserves particular mention. While built in and for Fremont County, it gives accessibility to one of the wonders of the country, and is a benefit and advertisement to the whole State. Every turn in the road discloses new beauties—its end is the very brink of the great canyon—and travelers are enthusiastic in declaring that it will eventually become one of the famous scenic thoroughfares of the world. The grade permits all classes of vehicles to make this amazing climb, and I am confident that few states can boast a finer example of scientific road-building. The greater portion was blasted out of solid rock, and yet the cost to Fremont County was only \$6,400. With free labor the work could not have been performed for less than \$40,000.

"Equally noteworthy, although less conspicuous, is the recently completed road through Dead Man's Canyon. This is on the main line of roadway from Colorado Springs to Canyon City, and has added another remarkable stretch to Colorado's list of wonderful scenic drives. In addition to cutting down the distance between these two points from fifty-one to forty-four miles, the grade will be reduced from a maximum of twenty-seven per cent at Red Hill to a minimum of six per cent. I would suggest that the legislature be asked for an appropriation that will permit us to work a large number of men on this highway throughout the ensuing biennial period and carry it to splendid completion.

"In the seventeen miles already completed we have encountered the most difficult part of the work, and eight miles of which has been blasted out of the foothills largely through solid rock. The remaining twenty-seven miles offer few obstacles, being dirt work largely."

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ACTUAL COST OF ROADS BUILT BY CONVICTS.

County.	No. miles.	Actual cost.
Las Animas	11	\$10,600
El Paso	17	24,000
Pueblo	14	15,700
Fremont	6	6,400
Total		\$56,700
Total number of miles constructed		50
Average number of men employed		104

ESTIMATED COST OF ROADS BUILT BY CONVICTS IF CONSTRUCTED BY CONTRACTORS WITH FREE LABOR.

104 men at \$2 per day, working 610 days.....	\$126,880
Superintendents and overseers	6,000
Stone masons	4,000
Blacksmithing, etc.	4,000
Culverts and bridges	32,000
Wear and tear: teams and tools	4,000
Feed of teams	12,000
Interest on equipment	4,000
Contractors' profit 10 per cent.....	19,280
Total	\$212,160

The effect of the "trusty" system, as employed by Colorado penitentiary officials, has had a very wholesome effect upon the discipline of the institution. Only those whose conduct has commended them can expect admission to this class. Mere conformity to printed rules, so easy to the old "rounder," does not suffice. The prison atmosphere is impregnated with the sentiment of the "square deal"—from prisoner to prisoner, from prisoner to officer, from officer to prisoner. Fifty to one hundred men see the warden in "audience" after chapel, Sunday mornings; and about three-fourths of the requests are for a trusty job on garden, ranch or road camp work. The prisoners are not dismissed with "yes" or "no." The pros and cons are discussed by warden and prisoner. Length of term, time already served and needs of a dependent family are taken into consideration, as well as the general conduct of the prisoner.

If there be a place where the man can be employed outside of the prison walls, in case the prisoner has impressed the warden that he will

be "on the square," the warden will ask him to raise his right hand and take an oath to be faithful in the work to which he may be assigned, and not to try to make a "get-away." In several instances men who have run away have voluntarily returned themselves, assigning the reason that they had not given the warden a "square deal," after he had trusted them, on their oath.

The experiences of Colorado prison officials, in common with the prison officials of several other communities, only confirm the views upheld by students of prison problems for many years—that a very large percentage of our prison population consists of men who have a distinct and encouraging sense of honor. The old prison system only crushed such men to the level of confirmed criminals. The modern spirit of prison management points to hope and redemption.

Since the above-described regulations have been enforced in the Colorado penitentiary, the Prison Association has helped several hundred prisoners from the prison and the road camps to a new start in life. The prisoner who is paroled from the public highway camp is invariably sound in body and mind. He is readily placed at hard labor, and does not break down by reason of nervousness or flabby muscles, as is often the case with the man who is paroled from within the prison walls. Indeed, we oftentimes wish the day would speedily come when state farms and state highways would supplant the walled prison for most of our convicts. Fewer lapses into crime would result.

PROFESSOR FERRI'S COMMENT ON THE SEVENTH INTERNATIONAL CONGRESS AT COLOGNE.

ROBERT FERRARI.

On the 23rd day of November, at the Great Hall of the University of Rome, Enrico Ferri, Professor of Criminal Anthropology, delivered the first lecture in his course. It was a lecture of admirable simplicity and beauty. It contained a summary of the main events of the Congress, and, in especial, an exposition of the progress of the Positive School of Italy in other lands. The lecture is now published in the *Scuola Positiva* for January, 1912.

Though the form of what follows may indicate that it is a verbatim translation of Signor Ferri's lecture, it is rather a summary. Wherever it was feasible to use Signor Ferri's words I have used them. But I have, for the most part, condensed the language, while preserving the thought. Whenever I have deemed it advisable to clarify the ideas of the lecturer I have not scrupled to amplify and elaborate them in my own words and in my own way, and this for the benefit of English readers who might not be familiar with the doctrines and the mode of thought of the Italian Positive School.

Thirty years ago the biologic, social and juridical teachings of Lombroso and others of the Italian School were ignored or mocked at. Gradually, however, day by day, they have become stronger and stronger, till now we are presented with the dazzling spectacle of having almost all our ideas not only accepted, but defended with the vigor of the original giants. Even public opinion is beginning to become aware of the fact that the forces and the forms of crime are the products of individual degeneration and of the mental and moral disequilibrium in the murky and filthy atmosphere of the family and of society at large. On the other hand, legislators and judges, and administrators are coming to know more and more that their systems, inspired by a penal and criminal metaphysics, are erroneous and have failed. These systems do not protect the honest from the criminal, but rather increase the amount of crime, and take away from the redeemable criminals, who are in the great majority, even the last ray of hope that they may some day become readjusted and readapted to the society which they have gotten out of harmony with and offended, and condemn them to the life of beasts, or to hydrophobia by cellular isolation, or by forced idleness. We have now at this University the Institute of Applied Criminology in which we study the criminal from the practical point of view. I shall during this year, with the help of several of my illustrious colleagues, establish the criminalistic section of this Institute, which shall be a school for the application of juridico-criminal ideas, an experimental laboratory, therefore, of re-

search in the biology and the sociology of the criminal, in the statistics of criminality, and in criminal prosecutions in court looked at from the point of view of the judge, the witness, the lawyers and the jury. It will, hence, be a school for putting into practice the theoretical knowledge gained in other courses. Germany and France have already established such schools, and there are several in Italy, among which is the Institute of Criminal Anthropology at the University of Turin. In this School of Juridico-Criminal Applied Science undergraduates and graduates, magistrates and functionaries will become expert in the examination of criminals, in the anatomy of crime and in the procedure at trial.

The Cologne Congress was admirably organized by the distinguished Aschaffenburg, Sommer and Kurella, and warmly received by the Municipality of Cologne. It had 290 members, among whom there were 14 governmental delegates, and 20 representatives of scientific associations. There were professors of criminology, psychiatrists, anthropologists, magistrates, prison officials, army colonels, police officials, District Attorneys and Attorney-Generals, and publicists. This Congress was the seventh in the series of International Congresses of Criminal Anthropology.

The first was held here in Rome in 1885, and that meeting marked the baptism of the new Science. The second was held at Paris in 1889. It was there that a line of demarkation was drawn between the French and the Italian schools. This line, however, is the result of a scientific misunderstanding. The "criminal type" discovered and shown to exist by Cesare Lombroso came to be understood in a purely anatomical sense. But the French School maintained—and in this position some people in Italy concurred—that the criminal was the exclusive product of the social environment. The truth is that I, as one of the Italian School, thought it necessary to account for the criminal in a more complex way, and said that crime is the result of three factors which are inseparable no matter how much in some case one factor or another may predominate: The anthropologic factor, that is, the organic and the psychic organization of the criminal, the telluric factor, that is, the geographic environment in which the man finds himself, and the social factor, the family and community conditions which every moment influence hereditary predispositions and acquired characters and, therefore, the conduct of every individual. There is in this conception nothing foreordained and predestined—nothing fatalistic. There are individuals who are predisposed from birth to tuberculosis, but this fact does not point inevitably to early or late death from tuberculosis. If these individuals have the good fortune to live in hygienic surroundings and in economic comfort they

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will not die from consumption; but if they are badly nourished, if they are oppressed by excessive work, if they live in squalid surroundings, and breathe foul air and get no sunlight, they will surely die of tuberculosis; the predisposition will find fertile soil in which to grow, and it will soon turn into actual disease. So it is with the person who has inherited predispositions to insanity or to suicide, or to crime. There is, hence, nothing fatalistic about this doctrine; on the contrary, it leaves room and scope for the betterment of the criminal by bettering his organism and his environment. It is, in fact, a spur to social and economic improvement. And it has the further advantage that it explains crime naturally and not metaphysically. The metaphysical is, by its very definition, beyond the pale of natural phenomena. We have no control over what is beyond nature. But we may so conduct our operations as to subdue physical phenomena to our wills.

At the Paris Congress a commission had been appointed to make a comparative study of 100 criminals and 100 normal persons of the same region and the same social class and to report at the next Congress at Brussels in 1892. This commission did not make this study because, it said *à priori*, it could not be done. For this reason the Italians did not take part in the Brussels Congress. It was natural, therefore, for the enemies of the Italian School to win an easy victory and to hasten to proclaim the death and the burial of criminal anthropology. But four years afterward, in 1896, the Congress at Geneva reaffirmed the victory of our doctrines, because I grasped the occasion to blot out the scientific misunderstanding concerning what I had in 1880 called the born criminal. I maintained, as the Positive School has always maintained, with the approbation of Lombroso, that the criminal is simply hereditarily predisposed to crime and not fatally condemned to it, because crime does not emerge unless the anthropological factor of the criminal works in conjunction with the physical and social environment. And Lombroso himself described the type of the born criminal who, by the way, is very rare, but who in favorable surroundings commits no crime.

The Fifth Congress was held at Amsterdam in 1901. It reconfirmed the decisive position of the Italian School upon the matter of the born criminal. The sixth was held at Turin in 1906 and was the scientific jubilee of Cesare Lombroso.

I must now proceed to present to you the general characteristics of the Seventh Congress, and the resolutions adopted by it.

The first characteristic was the triumphal affirmation of the doctrines of the Italian School. The Congress felt the number, the variety and the importance of the contributions brought to the Congress from

Italian representatives. Mario Carrara spoke on the "Importance, Theoretic and Practical, of the Cranial Anomalies of Criminals"; Gina Lombroso Ferrero, daughter of the master, contributed a paper on "Probation Systems for the Education of Juvenile Delinquents"; Dr. Saporito read a paper on "The Hospital for the Criminal Insane"; Captain Funaioli, a paper on "Crime in the Army"; Dr. Lattes, one on "Cerebral Asymmetries of Criminals"; Mr. Tarolli, one on "Sexual Neurasthenia in Relation to Crime." Other Italians who did not come sent on their researches. Among these were Sante De Sanctis, who wrote on "Epileptoids"; Professor Zuccarelli on "Comparison between Prehistoric Craniums and the Craniums of Contemporary Criminals"; Dr. Talciola on "The Treatment of the Criminal Insane"; Professor Del Greco on "The Criminal Mentality," Garofalo on "The Connection Between Personal Predispositions and the Influence of the Environment"; Ottolenghi on "The Relations Between a Scientific Police Force and Criminal Anthropology." I presented a paper on the "Tentative Penal Codes of Germany, Austria and Switzerland." The paper had a full discussion by the most distinguished representatives of the juridical, psychologic and social sciences, and the Congress voted a resolution which embodied the thought that the tentative codes mentioned systematically applied the conclusions of criminal anthropology and sociology for the defence of society against crime.

The second characteristic was that this was the first Congress held in Germany. Every man knows how valuable are the contributions of Germany to modern thought. It is, therefore, with peculiar pleasure that I note not only the advance made by the Italian School as you may see from the fact that the Congress then met on German soil for the first time, but also the fact that it was easy for the Italians to present their own views to the Germans and not views distorted by passage through the murky waters of our enemies.

The third feature was the absence of criminal sociology arguments. The themes included questions of criminal anthropology and of their juridical application. The questions of the social genesis of crime were excluded. This was a grave error, as the factors leading to crime must be studied if we wish to diminish crime.

The fourth salient quality was the scarcity of purely theoretic questions. This is explained in two ways: first, outside of Italy scientific researches in criminal anthropology, morphological and physio-psychic examinations of the criminal, are much rarer than they are among us; and secondly, technical researches mark the infancy of a science; the mature science feels the beating and the tremor of life. Upon the psychology of

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the criminal, however, there were some discussions in which Professors Lorimer and Mittenmaier, Klaatsch and Rosenfeld took able part.

The last great feature of the Congress was the decisive prevalence of arguments looking to the practical legislative, judicial and administrative application of the ideas and proposals advanced by the school of criminal anthropology and sociology. Two discussions which were summed up in two resolutions gave to this Congress the mark of practicality; one on the Draft Penal Codes of Germany, Austria and Switzerland; the other on the indeterminate sentence.

These tentative codes are the work of officials much more than they are of theoretic jurists, and hence they reflect immediate and practical knowledge rather than academic prejudices. My pupil, Filippo Grispigni, has made an excellent systematic study of these codes, and I have used it to present to the Congress their fundamental characteristics. These are first, the fact that the codes have put together, in the system of legal sanctions against crime, punishments and measures of security. The classical forms of punishment are here less numerous than are the measures of security. It was formerly held that the only measures of security that ought to exist were the measures adapted to protect society against the more abnormal criminals, or the more dangerous through recidivism, insanity, juvenility or alcoholism, because in these cases, it was said, there is no responsibility, or so little of it, and, hence, they were thought to belong to administrative penal law and not to penal law pure and simple. But now the point of view is changing as is evidenced by these codes, for here we have as the underlying current of thought not vengeance against the offender, but protection of society and reformation of the criminal. We cannot separate those who are morally responsible from those who are legally responsible. We must have one consistent theory. Everyone is legally responsible for the crimes he commits, whether he be morally responsible or not. Insanity does not excuse from legal responsibility, because this responsibility is based, according to our school, upon the protection of society. The morally responsible person must be segregated from society not because he has offended society and the latter wants to wreak vengeance upon him, but because society must protect itself, and it can protect itself only by excluding the offender from social life either temporarily or permanently. The morally irresponsible, the insane, for instance, must be separated from the normal life of the community also for the protection of society. Whoever lives in society has the advantages of social life, and must, if he does not adapt himself to the ways recognized as

proper by the community, suffer the disadvantages of exclusion from that life.

Over thirty years ago I distinguished these defensive measures into four classes; preventive measures, or means of social prophylaxis; measures reparatory of the damage done, which are sufficient for the occasional criminals guilty of light offenses; repressive measures; and eliminative measures, which consist in the temporary or permanent segregation of the habitual criminal who is less adapted to social life, in institutions preferably agricultural, but for an indeterminate time. This criterion of the readaptability of the criminal rather than the perilousness of him seems to me more complete and sure. If the end of penal justice is not moral or juridical retribution, but social defense, it is evident that the means taken against the criminal must be those which will make him suited to live in society, or those which will prove him to be incapable of living in society.

The second thing to notice about the Tentative Codes is that they do not base punishment upon the moral responsibility of the individual; The objective standards of the Codes make moral responsibility only a means of classifying the measures most apt for this or that criminal. To have attained in three Draft Penal Codes the application of an idea that subverts all the old criteria of retributive justice based upon moral culpability, is to have taken a long step on the way to the triumph of the ideas of our school.

The third characteristic of these Codes is that it is not the objective gravity of the crime, but the personality of the criminal that comes to the attention of the legislator, and, in consequence, must be actively present to the judge. So that it is now the indeterminate sentence that is one of the guiding lights of the new prospective laws; and the places of punishment, the prisons, have been abolished, and in their stead there have been established institutions for habitual criminals, workhouses, asylums for alcoholics, homes for correction and for education, places for the education of adolescents, asylums for the criminal insane.

The next feature of these Codes is the obligation imposed upon the judge to stretch out his power and his activities over the criminal after the latter has been sentenced. Formerly, the police arrested and prosecuted, the judge sentenced and the prison official executed the sentence. But these officials were all separated from each other. None cared for the previous or the later step. Each did his narrow and incomplete work, and none bothered about the whole process from arrest to discharge from prison. But now we have these different forces

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working in harmony to produce the much desired transformation—the readaptation of the criminal to social life. The judge has the right to sentence, or to suspend sentence, or to pardon absolutely, according to the determining motives of the crime and the character, whether more or less perverse, of the criminal, and he must interest himself in the criminal's after-life in prison, and if he finds that the unfortunate shows himself to be readapted to social life, then he may abridge the sentence and set him free. *

Professor Gleispach argued for the indeterminate sentence, and Professor Thyreu argued for the classical doctrine. The discussion was ardent and prolonged. It was the thought of prison officials, and of reformatory directors, like Ives, the representative of the League for Penal Reform, of London, and of magistrates, like the eloquent Friedmann of Budapest, and like Von Hessert, Attorney-General at Darmstadt, that prevailed.

The Congress considered the sterilization of criminals as it is practiced, for example, in the State of Indiana, U. S. A. But the majority raised grave doubts concerning the advisability of such a procedure. As an individual therapeutic matter the surgeon may have recourse to sterilization, but I cannot think that the complex problem of criminality will find its solution in a surgical operation established by law.

There was connected with the Congress an International Exposition of Criminal Anthropology with a large collection of documents of human degeneration, truly strange and very suggestive, of instruments of criminality, and of technical means used in the fight against crime.

My exposition of how misdeism, that is, the sudden killing by soldiers of fellows and superiors, was rooted out of the Italian army, created a great impression, especially among the army doctors. The remedy for the gangrenous conditions that formerly existed was not the shooting of the offenders; it was, instead, the systematic application of the proposals of the criminal anthropological school, which advocated the judicious sorting out of the army those who were candidates for crime because of neuroses, especially of the epileptic kind. It was the publications of Lombroso, Bianchi, Setti, Zuccarelli, Frigerio, Borri, Morselli, Ottolenghi, Scarano, Trombetta, Lanza, Funaioli, Saporito, Consiglio, Cognetti, and others, on crime in the army that effected a noble conquest of science and of civilization.

The substitution of educators, teachers, for prison keepers is a great reform, the introduction of which is due to Alessandro Doria. Of this reform I notified the Congress. Oronzo Quarta has been charged

ROBERT FERRARI

with the drawing up of a Code for children which, it is hoped, will be much more complete than the famous Children's Act of England. This new justice for minors, up till now, abandoned, abnormal, delinquent, shall become the justice of to-morrow for all juveniles and adults. This justice is founded upon the firm ground of the doctrines of our school: the study of the individual, in himself, as an organism, and in his relation to family and social causes that spurred him on to wrong. full power in the magistrate, who shall be expert in penal justice, and hence, well furnished with psycho-biologic and sociological, as well as juridicial, cognitions, to adopt various means depending on the diversity of the cases, and execution of the sentence with the view to the social readaptation of the convict. Only then shall we see justice, not armed with the sword, but illumined by science, co-operating to diminish the pain and the misery of human life.

CRIME AND INSANITY IN THE TWENTY-FIRST CENTURY.¹

CESARE LOMBROSO.

[This article was sent in November last, to Professor John H. Wigmore, of Northwestern University, by Signa Gina Lombroso-Ferrero, of Turin, daughter of Professor Lombroso, and wife of Professor Ferrero, for publication in the JOURNAL, with the following explanation: "Within the week I have received the last three numbers of the JOURNAL of the American Institute of Criminal Law and Criminology, and have just reviewed them for my father's 'Archivio di Psichiatria.' I cannot delay expressing to you my enthusiasm for the way in which the JOURNAL has started off so excellently. As a mark of my appreciation of its high character, I send you herewith the manuscript of an article corrected by my father's own hand for publication and found in his desk. I had supposed at first that it had been contributed by him to some European journal; but I have not seen it anywhere in print since his death; so that it will now receive its first publication in the JOURNAL; and it has indeed a special interest for America."—Eds.]

It is not as easy to become a prophet in our days as it was formerly, and it is still less easy to be believed as such. But there are prophecies unconnected with the more or less debatable question of spiritism and prediction, which are only generalizations of existing phenomena, and therefore are to be more generally admitted and accepted.

To say, for instance, that the number of insane will increase five times, and perhaps more, in the coming century, is only a simple statistical deduction from what we see happening in most civilized nations. Jacobi showed that in France the insane increased in 33 years by 53 per cent, while the population grew only 11 per cent. In Italy the number of insane, which was 17,471 in 1880, had been tripled in 27 years, and reached in 1907, 45,000. In the United States the population doubled in 30 years, while insanity increased six times or more, from 15,610 cases to 95,998.

This is bound to happen everywhere, for the causes responsible for the plague are increasing in number and intensity. South America exports mate and cocoa. The Orient uses its opium and haschich, Northern Europe introduces into the South its beer and whisky, while the South sends north its spoiled maize; each one of these products being

¹Translated by Dr. Victor von Borosini, Chicago.

responsible for numerous deadly brain poisonings. Deadly also are the ether, the morphine and the codein, which, under the guise of medicine, given at the hospitals, proceed to disturb the peaceful home of the citizen and lay snares for his mind in the same way as has been done for centuries by wine, and still worse by its substitutes, beer, brandy, and vermouth. It is easy to preach in fiery words against this state of things. Refuge is taken in intoxicants when the mind is most excitable and excited, when it seeks to wrest from the increasing dullness of the daily life a bit of artificial happiness. For in the same ratio as civilization and the human mind develop, the amount of the consumption of liquor will increase; alcohol as a stimulus will, in its turn, be given up only for more dangerous drugs such as ether, morphine and the like, until more sensible human beings have learned to offer to the mind craving for enjoyment greater and more vigorous attractions than those offered by these lethal stimuli. The degrading worship of the golden calf impels men in an inferior position to reach out for the highest without respite or moderation. In this struggle man uses up prematurely his most vital forces, and in seeking repose from fatiguing work, when resting will no longer benefit him, he increases the damage done by alcoholic poisoning. This kind of strenuous work has in 30 years caused, as Beard observes, every citizen of the United States to become a neurasthenic, and the same effects are being produced in the more civilized parts of Europe. As Kraepelin says, "too many nerves and not enough strength."

As a probable result of the exhaustion, which manifests itself in hereditary degeneration, we see how in recent years (this tendency will increase much more in the coming century) the forms of insanity have changed, how the very curious forms of monomania, melancholy and hallucination, on account of which our insane asylums have been full of so many imaginary kings, inventors and victims of free masonry and of jesuits, tend to disappear. They are replaced by not clearly definable, so-called mental disturbances or by a form of precocious insanity, in which the mental confusion is hardly distinguishable from the old monomania and melancholy, the separating lines being so blunted. The discovery is due to the great Kraepelin, who had hardly announced the very existence of these phenomena, when they began to increase at an alarming rate. These precocious forms of insanity, as well as alcoholism, dementia paralytica and the anomalous forms of epilepsy, will constitute the greatest number of cases in our insane asylums, while, under the influence of the beneficial effects of steadily increasing wealth, the number of idiots, imbeciles and victims of pellagra will steadily decrease.

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CRIME.

Vice versa crime will decrease in extent and in ferocity. He, however, who studies the statistics of modern Europe does not as yet find much consolation. Though the most ferocious crimes, like murders, are really decreasing, thefts, embezzlements, and like crimes, have greatly increased, and the number of forgeries has almost doubled. The number of crimes has increased materially. We note, however, in Australia, a lessening, while in the United States the growing number is solely due to the colored population and to the immigrants. In London and Geneva, where all the preventive and defensive actions against crime have been taken, crime has diminished each year, though they are large centers of population. For these reasons one can easily prophesy that the number of crimes will doubtlessly be greatly reduced in the coming century. With a more complete knowledge of psychiatry, not a few will spend their lives for the greater protection of the others, in insane asylums. The increasing number of repeaters and juvenile offenders observed in Europe (repeaters in France in 1880 were 20 per cent, in 1890 40 per cent, in Belgium still more; the number of juvenile offenders grew in Italy from 30,118, in 1890, to 67,944 in 1905) can be explained by the doubly abnormal state of criminal law and prison administration. This is due to the fact that, only cautiously, and in a small measure, the conclusions of the modern school of criminology in regard to the physical and mental deficiency of so many criminals, were adopted, while almost all the doctrines of the old school are still adhered to. So we find the disadvantages of both schools and the advantages of neither in the system of legal and penal administration. It is, as if the alienists, still full of the old conception that insanity is a sin to be punished by chains and flogging, accepted only partially the theory that it is the result of organic anomaly to be treated partly as a sin, partly as a disease.

Our point is, that many crimes are natural phenomena, not caused by the human will. We must, therefore, without being hard-hearted, defend ourselves against them. Many have instinctively accepted this theory. The penal codes, based upon the doctrine of free will and intimidation, have been mitigated in many inappropriate ways not consistent with the conception of the fundamental varieties of the subject. Hereby the damage done by the old school, was increased, they reduced the time of sentence, suppressed the radical capital punishment and the confinement for life, softened altogether the old system, without making it more effective.

In the coming century obstacles in the way of reforms will be removed by the adoption of many of the most essential measures sug-

gested by our school, as is the case in London and Geneva, where the lifelong confinement of incorrigibles, and the seclusion of insane criminals in an insane asylum have been adopted as a means of preventing any contact of human society with the most dangerous criminals, and of making at the same time their propagation impossible. The coming century will provide on a large scale agricultural colonies for abandoned and neglected children, shelters for the unemployed and vagrants, decent shows at a reasonable price for the frequenters of saloons, and will introduce fines, warnings by the judge, work in the open air, shower baths, confinement in the home in place of the degrading prisons, which tend to increase crime instead of making it rarer.

Through such reforms we shall eliminate to a large extent casual delinquency, especially of juvenile offenders, who contribute such an appalling majority to the large army of criminals. In the future we will find in the few prisons, which must be maintained, schools, conferences, libraries, interviews with men of judgment and honesty, premiums for work well done. And it will be shown to the criminaloid, and to the criminal moved by passion, that, nothing is done to curb him, but everything is done for his good. When they feel that their own personality is no longer crushed, and see that they are directed to some useful occupation, treated like human beings, and not like slaves under a convict number, the prison discipline will not only improve, but the cases of backsliders will very much decrease.

This does not mean, however, that crime will entirely disappear, because it is partly the result of human nature, partly of social conditions. While decreasing to some extent, it is going to change, but not to disappear entirely. The statistics of civilized countries already show this tendency; crimes committed by women, which at present represent a fraction of the criminal acts committed by men, show an increase. And not only in number, but also in seriousness they will approach those of men. We have seen Madame Humbert profiting for years by the most subtle banking schemes, as manifestly the greatest swindlers among men could not have done. Madame Gouransee advantageously used newspaper advertisements, and her most advanced knowledge of toxicology in order to seduce, in the hope of a rich marriage, individuals whom she poisoned and buried in her own garden. A German Gretchen, profiting by her legal knowledge of a holographic will and of falsification, and of the advantage of a revolver over poison, shoots her lover to benefit by his inheritance.

The crimes of men, while decreasing, will become more complicated and will show by their nature that men profit by and advanta-

geously make use of all progress along technical, scientific and economic lines. We have already seen in our day new crimes committed with the help of the bicycle, the automobile, and, in the United States, with railroad trains, as, for instance, in the case of Tracy, who fled from the Oregon prison on a railroad engine. Pursuit can only be undertaken with the help of another train, full of guards.

In the United States, in Russia, and in Germany, veritable stock companies for the committing of thefts on a large scale, with a regular system of bookkeeping and accounting, have been discovered. In Moscow we have seen a society of 30 aristocratic robbers with an enormous capital, with luxuriously fitted houses in town and in the country, with servants, carriages and automobiles. In New York we find insurance swindlers (eight companies were defrauded millions). A band of these swindlers took out numerous policies for old and sick people; for the medical examination they presented persons in the best of health, they falsified the names and even the death certificates. They received premiums before the policy holders had died and held funerals with a wax figure, while the person, who, after the sworn statement of the physician, should have been inside the coffin, followed the funeral cortege with his associates. Holmes will be the best representative of the criminal of a future epoch. To Holmes poisons were the means, and life insurance policies the inspiration for committing crime, but, in his extensive criminal acts, he, as a child of his century, made use of the telephone, the telegraph and newspaper advertising. The criminals of the coming century will be of his type, as I said before.

To resume, crime will decrease in number and seriousness, and, if criminals employ modern discoveries in the perpetration of their deeds, they will find that the progress of civilization, as shown in anthropometric measurements, photographic description of criminals, telegraph and telephone, and the most subtle analyses of toxicology offers the most powerful agents for their discovery, apprehension and suppression.

THE CHICAGO POLICE—REPORT OF THE CHICAGO CIVIL SERVICE COMMISSION.¹

MESSRS. CAMPBELL, FLYNN, AND LOWER.

On September 5, 1911, the Civil Service Commission of Chicago was directed by Mayor Harrison to institute an investigation into the police department of that city to determine the ground of the charges that had been "rife in the local press to the effect that a criminal conspiracy existed between certain commanding officers of the police department and certain gamblers operating and attempting to operate within the city limits." As a matter of fact, however, the Commission instituted a somewhat wider investigation than is indicated in the above phrase. It undertook:

(1) "To determine the truth or falsity of the charge that certain gamblers are operating and attempting to operate within the city limits under police protection.

(2) "To determine the truth or falsity of the charge that there is a connection between the Police Department and the various criminal classes.

(3) "To fix responsibility for such conditions as may be shown to exist contrary to law and efficient police duty.

(4) "To report fully such conditions as may be shown to exist tending to impair individual and departmental efficiency.

(5) "The inquiry was conducted in accordance with Sections 12 and 14 of the Civil Service Act. In the course of its investigation the Commission availed itself of all the authority conferred upon it by law to administer oaths, to secure by subpoena the attendance and testimony of witnesses, to compel the production of books and records, and to remove from the public service unfit employees."

To that end the Commission employed special counsel and took such other measures as were deemed necessary to the successful prosecution of such an inquiry. The investigation was started under Section 14 of the Act of the Legislature entitled "An Act to Regulate the Civil Service of Cities," approved March 28, 1905. This act provides that the Commission shall investigate the enforcement of the act and of its rules and the conduct or action of the appointees to the classified service in its city.

¹The substance of the preliminary report of the Chicago Civil Service Commission. Signed for the Commission by H. M. Campbell, John J. Flynn and Elton Lower.

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GAMBLING.

Considerable time was spent in trying the cases arising out of open gambling on the day of the Gotch-Hackenschmidt wrestling match in the White Sox Base Ball Park on Labor Day, September 4, 1911. The responsibility for the conditions existing there was fixed upon Lieutenant William W. Walsh, and he was discharged from the force on the 4th day of October, 1911. After his discharge, Lieutenant Walsh applied to the civil courts for reinstatement, and his case is pending.

At the time the investigation started, the Commission secured reliable information that there were in operation more than 500 handbooks and gambling places in the city of Chicago, after allowing for shifting games and duplications. At the present time it is safe to say that, through the operations of the Gambling Squad and the fear on the part of the gamblers of the Commission's investigators, the number has been reduced to the very lowest minimum fairly to be expected in a city the size of Chicago.

The nerve center of the handbook business in Chicago is the racing news service furnished by the Mont Tennes combination. This is received and disseminated largely by telephone, both Bell and Automatic. There is some so-called "independent" service, but the monopoly of Tennes was practically complete. Tennes can be eliminated from the field by a continuation of the present police activity. Men will not continue a losing venture long, and the Commission is advised that the loss at present is heavy. One of the Tennes methods is to corrupt the individual members of the Gambling Squad. In one instance, at least, they have been unsuccessful. The ingenuity and daring of the people operating handbooks fairly illustrates the difficulty of entirely suppressing this form of gambling, requiring as it does but little or nothing in the way of quarters, easily moved from place to place, and from the quickness with which evidence can be destroyed or secreted. For instance, the investigation showed that the handbook at 68 West Chicago avenue, in the immediate vicinity of the East Chicago Avenue Police Station, was open continuously and doing business every day from the 20th of September to the 27th day of October, 1911, when the place was raided by the Gambling Squad. All inmates escaped. It was shifted from the lower floor to the upper floor, back to the lower floor again, then to a flat on Rush street, then to a barn up an alley where it operated two days, back to the flat, back to 68 Chicago avenue, back to the flat, to a house on Rush street and then to 1013 Dearborn avenue, where it was again raided. The book is still in operation. While it was in active operation and before the Gambling Squad had persistently raided it, the Chicago

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avenue police were on the most friendly terms with the "look-out," and there is not the slightest doubt, from the testimony of commanding officers in this precinct, that they had constant knowledge of its existence. The same ingenuity and activity were noticed in several other handbooks reputed to be controlled by Mont Tennes in various parts of the city.

While it may be difficult to prove by direct evidence that the actions and movements of this squad, while it was operating against the bookmen and other gamblers, have been "tipped off" by the local police, and that they have been followed and shadowed by precinct plain-clothes men, yet the Commission is convinced that such has been the case and that the operations of the squad have been greatly hampered by opposition in the department. On the other hand, it seems clear that in the start, at least, the Gambling Squad itself was not above suspicion, either on account of palpable stupidity or deliberate collusion with the gambling fraternity.

The Commission is of the opinion that under a properly organized and administered police force there is no necessity or excuse for a gambling squad such as the one now in existence. If the Gambling Squad can locate and raid handbooks and gambling houses in precincts with which they are unfamiliar, the inefficiency of the commander of that precinct in failing to so raid and suppress gambling, is conclusively shown. The Commission has secured a great deal of general information relative to open games on public streets in the city of Chicago at various times during the past summer, the existence of which was positively known to commanding officers and the men under them. The existence of these places and their character, shown by the testimony in the public hearings to be known to the police, can be explained only on the ground of inefficiency or complicity.

PROSTITUTION.

That prostitution has existed in the past, does exist now, and probably will always exist, is admitted by the Commission. The state laws and the city ordinances prohibit the operation of bawdy-houses, assignation houses, houses of prostitution and ill-fame. If the Police Department of the city did its sworn duty to enforce the laws of the State of Illinois and the ordinances of the city of Chicago, there could be no open houses of prostitution. However, upon the theory that public opinion permits a breaking down of the laws and ordinances in this respect, houses of prostitution and assignation have been permitted to run unmolested by the police in various parts of the city. In order to define the relationship of the Police Department with houses of this character, and

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prostitution generally, the then General Superintendent of Police, on April 28, 1910, promulgated the following rules for the regulation of this vice:

"Office of the General Superintendent of Police,

"Chicago, April 28, 1910.

"The following orders regulating vice, which have been heretofore promulgated, are reissued in this form in order that every member of the department may be personally advised concerning them and govern himself accordingly:

"To Commanding Officers: The following rules governing the regulation of vice are hereby promulgated and will be rigidly enforced by all commanding officers:

1. "Messenger and delivery boys, or any person over the age of three or under the age of eighteen years, shall not be permitted either in the district or to enter the premises.
2. "Harboring Inmates Under Legal Age—The law in this subject is to be rigidly enforced, and all keepers held strictly accountable. If inmates under age are found, the houses shall be suppressed, and it shall be definitely understood that this action will be taken in any and all cases where this law is violated.
3. "Forcible Detention—No person, regardless of age, shall be detained against his or her will, nor shall iron bars or other obstacles be permitted upon any exit.
4. "No Women Without Male Escorts shall be permitted in a saloon. All soliciting of this nature to be vigorously suppressed.
5. "Short Skirts, Transparent Gowns or Other Improper Attire shall not be permitted in the parlors or public rooms.
6. "Men will not be permitted to conduct or be domiciled in a house of prostitution or to loiter about the premises. Males evidently subsisting on the income of inmates will be arrested as vagrants.
7. "Soliciting in any form shall not be permitted, either on the streets, from doorways, from windows or in saloons.
8. "Signs, Lights, Colors, or Devices, significant or conspicuous, indicative of the character of any premises occupied by a house of ill-repute, shall not be permitted.
9. "Obscene Exhibitions or Pictures shall not be permitted.
10. "Restricted Districts—No house of ill-fame shall be permitted outside of certain restricted districts, or to be estab-

lished within two blocks of any school, church, hospital or public institution, or upon any street car line.

11. "Doors—No swinging doors that permit of easy access or a view of the interior from the street shall be permitted. All resorts shall be provided with double doors which shall be kept closed.

12. "Liquor—On and after May 1, 1910, no liquor will be permitted to be sold, carried in stock or given away in connection with any immoral place.

"The foregoing rules shall govern throughout the city. These regulations are permanent and commanding officers will hold all responsible to rigid accountability for their enforcement."

Chief of Police McWeeny, upon his examination by the Commission, stated that this rule was in full force and effect and in no way modified or amended. It also appears very clearly from testimony that shortly after the present Mayor's inauguration, the Chief of Police and the commanding officers of the divisions, districts and precincts in which houses of prostitution were generally known to exist, were called together, and directed that this order be strictly enforced.

With one exception, every commanding officer in command of territorial divisions where houses of prostitution were known to exist, testified he was familiar with the order, and that the same was being enforced to the best of his ability. The one exception, in command of a precinct where many houses of this character existed, denied ever having heard of the order.

With reference to houses of prostitution, the order above referred to prohibits the sale of liquor in such places. In the segregated district on the South Side the great majority of the houses of prostitution have government licenses, and since the first day of May, and down to and including the present time, have sold liquor in defiance of this rule, openly and notoriously. Government licenses are not so numerous in the vice districts in other parts of the city, but there are enough on the West and North Sides to indicate, without any other evidence, that from the sale of liquor comes a part of the revenue of these houses.

Up to the time the investigation started liquor could be bought openly, and with no questions asked, in practically all of the houses of prostitution and assignation in the city, with some exceptions in the 15th precinct, or South Chicago, where it would appear that in the houses other than those connected directly with saloons, the sale was more or less closely watched and prohibited. That such sale of liquor could continue without the knowledge of the police again means but one of two things—inefficiency or complicity.

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The order further prohibits soliciting from the doors or windows of houses of prostitution. The testimony of commanding officers of the vice districts in this connection was that such soliciting was sporadic and practically impossible of detection, and that every effort was being made to prevent it. Much complaint was made that the judges of the Municipal Court assessed too low fines to make the rule entirely enforceable. The facts, borne out by the investigation, are that in certain districts and along certain streets no concerted effort was made by the police to stop it. Our investigators secured star number after star number of uniformed patrolmen who stood idly by in a position where they could have prevented it easily, and an investigation of the police reports invariably has shown that the men in question were on duty at the time and place charged.

The statements of others bear out the truth of this charge against the department. It might pertinently be asked, Why have charges not been preferred against these men? In answer it may be said that the Commission is satisfied that the fault does not lie with the uniformed patrolmen, but with the commanding officers and the system. The matter of prostitution and prostitutes in each district is under the direct control of two or more plain-clothes men who report to no one but the inspector, captain or lieutenant who may be in command of the precinct. In police circles they are known as the commanding officers' "confidential" men. They make no reports in writing. No order is given by any one in authority, but the uniformed patrolman knows that he must keep his hands off where prostitutes are concerned, or may expect a transfer. This has been denied repeatedly on the stand, but statements made by responsible officers, given in confidence, including lieutenants, sergeants and patrolmen and even plain-clothes men assigned to this duty, have convinced the Commission of the truth of this statement.

No attempt to enforce this section of the rule appears to have been made, and here again the connection between the tough saloon and prostitution is clearly shown.

In most instances the reputed wife of the proprietor acts as the "Madame" and poses as the owner, but many instances have come to the Commission's attention of the ease with which a new "Madame" and a new "wife" are obtained at the same time. In fact, some owners of several houses are conveniently provided with several "wives."

No falling back on the alleged faults of the vagrancy law of the state can satisfactorily explain this situation. These men are not vagrants. As to the "pimps" who live in idleness on the earnings of one or more prostitutes, the advisability of securing the passage of a more

stringent vagrancy law may be well considered. The names, habits and haunts of these men are well known to the police.

The vice order prohibits short skirts, transparent gowns and other improper attire in public rooms, and also prohibits obscene exhibitions or pictures. Both of these rules have been violated in the South Side district, and also in other parts of the city. These violations have been known to the police, and some of the so-called "entertainments" are too vile for description. This feature of the order should receive particular attention.

Indulgence in unnatural practices in houses of prostitution has become so well established that it is a matter of common knowledge. All places where crimes against nature, as prohibited by the criminal laws of this state, are permitted, and all men and women indulging therein, should be driven from the city. The same should be done with the class of male perverts whose gathering places, haunts and habits are unquestionably known to the police.

There has been no opportunity of making a comparison of present conditions with those of prior years with regard to street soliciting, but it is sufficient to say that up to recently the extent of this practice in various parts of the city was a disgrace to the Police Department and to the city of Chicago. Prostitutes swarmed the streets with brazen indifference to the police, "hustling" in and out of low saloons, assignation flats and "transient" hotels.

Report after report has come in of the utmost indifference of the uniformed men to this vice; star numbers by the score have been turned in and the presence of these men at the place and time given has been verified from the records. Many of the street-walkers claim they have protection, and say they are not afraid of the police.

Here again the plain-clothes men detailed on prostitution are much in evidence. Practically to them alone is assigned the duty of arresting well known street-walkers, and a marked difference in the method seems to prevail as to "regulars" and "stragglers."

The "regular," i. e., one who is supposedly under protection and well known to the police, when it comes time to make an arrest to satisfy police conscience or the demands of the professional bondsman, accommodatingly goes to a quiet and appointed spot near the station, convenient to the plain-clothes men, and "stands for the pinch," is immediately booked out on bond signed by the professional bondsman, and back on her beat with but little annoyance or loss of time. The next day a nominal fine is imposed and the episode is over.

The story of the "straggler" is different. She is liable to be arrested

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by any officer and her fine is likely to be heavy. She is soon either driven out of the precinct or seeks "protection" and becomes a "regular."

The grave danger of the spread of venereal disease through this class of prostitutes and the effect upon young men, as well as the blot upon the good name of this city, makes it apparent to this Commission that a concerted effort should be made to stamp out this evil. There should be no discretion as to the fine to be administered. The ordinances should be so amended as to provide a fixed sum for each offense, with a final penalty large enough to make street-walking unprofitable.

The order of April 28, 1910, prohibits unescorted women in saloons. A judge of the Municipal Court has held that portion of the order unenforceable, even as applicable to disorderly saloons. Unescorted women do not congregate in the rear rooms of saloons or in rooms above with a bar connection, for any moral purpose. Any court in Chicago might properly take judicial notice of the fact, which every man knows, that women congregate in these places for the purpose of solicitation, either of the purchasing of drinks or prostitution, or both.

The city of Chicago, under its charter, is clothed with police power to regulate saloons and to abate disorderly houses and places of all kinds. There can be nothing much more disorderly, dissolute or disreputable than the saloons that cater to prostitutes who nightly ply their trade therein with the connivance and encouragement of the proprietors and employes thereof. We would respectfully suggest that the matter of the legality of that part of the order prohibiting unescorted women in saloons be submitted to the Corporation Counsel for an opinion, and for suggestions as to remedial legislation.

There can be no doubt of the validity of that portion of the order which prohibits soliciting in saloons, nor can any reasonable man see the slightest excuse for the failure of the police to enforce it. Yet, in certain parts of the city, such saloons have been and are now being permitted to run in open and notorious violation of the order, with the full knowledge of the police, and, up to a very recent period, without any attempt at regulation. For the present, the time-honored subterfuge of the professional escort is in vogue in many of the places, but this is so transparent a fraud that it can deceive no one. The only result is to force the unfortunate prostitute to part with a little more of her pitiful gains.

A statement by responsible commanding officers that there are no violations of this part of the order is conclusive again of one of two things—inefficiency or complicity. The Commission has collected a mass of evidence showing beyond the possibility of a doubt that large numbers of saloonkeepers on all three sides of the city cater to and protect this

trade, and could not exist without it. Among the statements secured by the Commission are those of dive-keepers themselves.

Police rules prohibit direct inside connection between saloons and assignation houses or transient hotels above. The rules in this respect have not been faithfully and impartially enforced, and there has been no uniformity of administration in respect to music and entertainments in saloons.

A natural adjunct to soliciting by prostitutes on the street and in saloons is found in the so-called transient hotels and assignation houses and flats. Where the soliciting is most prevalent, there such places are the most numerous. In the 38th precinct, where street-walking and saloon "hustling" are probably greater than any other district in Chicago, the responsible commanding officers admit the existence of approximately fifty such transient hotels and flats in an area of less than half a square mile, on their "police list," while our investigators have located and reported more than one hundred.

Many of these places have sold liquor without a city license, openly and notoriously. A most flagrant instance of police neglect or culpability is the permitting the operation of the Village Inn, 63 West Erie street, in violation of every paragraph of the police order of April 28, 1910, the state laws and the city ordinances. A hotel, a restaurant and a saloon, without a license to operate any one of them, a bawdy-house in connection, and open at all hours, on the police list, and nothing done except a "raid" of plain clothes men at an early hour in the morning, overlooking twenty or more "guests" hidden in the basement. This place was open as late as November 1, 1911.

It is a significant fact that well-known "shady" hotels are omitted from the police lists while well-known high-class places, such as the Virginia, Plaza and Newberry, are on the list. It is not intended to be inferred from this that the so-called "police list" of hotels included the Virginia in the "shady" class, but merely to indicate the looseness of the police record system.

The police method of keeping track of known prostitutes is a farce. The General Superintendent of Police testified that in every precinct where these people were, a card index was a part of the station record, and that this index gave all the information necessary. Every commanding officer of such a precinct testified that no such record was kept, and that there was no official record in any precinct except the 38th. Plain clothes men assigned to this duty keep individual pocket memorandum books that are not even intelligible, and are based upon no uniform system. If this vice is to be recognized and to be subject to police regula-

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tion and restriction, a uniform method of keeping official records should be installed and its completeness and accuracy guaranteed.

The order of April 28, 1910, provides that no house of ill-fame shall be permitted outside of certain restricted districts or upon any street-car lines. The Commission has been unable to learn that there is more than one recognized restricted district in Chicago, and that one by sufferance only. This paragraph of the order can only be meaningless and unenforceable until the "restricted districts" are defined. As a matter of fact, houses of ill-fame exist on all three sides of the city, in direct violation of this paragraph of the order, and have so existed for years.

One of the worst features of the prostitution problem in Chicago is the existence of numerous "call houses." These are usually flats occupied by one woman who upon demand calls in girls or women by telephone for the purpose of prostitution. Among the women "on call" at these flats are many of apparently good family, employes in down town stores and offices, who devote certain nights a week in increasing a meager wage by prostitution. This practice is not confined to flats alone, but includes so-called "transient" hotels of the more elaborate type. The "call houses" are ordinarily in residential sections on the North or South side, and the sale of liquor therein is common and unrestricted.

The system of medical examination of prostitutes and the issuance of certificates of alleged freedom from venereal disease is a species of graft that should be eliminated. Investigation on this line is just starting, but the Commission expects to show the following:

That certain physicians, catering to this class of patients, make such examinations and issue certificates, many of which they know to be false, and divide the proceeds with landladies; that in many cases certificates are issued weekly, without examination, and that the police in certain districts are in collusion therewith.

SALOONS.

As a general rule, saloons that cater to men alone close promptly at one o'clock, unless there is gambling in connection. Violations by saloons that cater to men alone, and where gambling is not common, are occasional only—due to the desire of the proprietor to be a "good fellow" with an occasional convivial crowd that is willing to spend an hour or two and some money. This, while a violation of the ordinances, is not in itself particularly subversive of morals. The all-night saloon that keeps open to cater to the prostitute and her male companions, and to the "skin" gambler and his victim, is the one to be placed under the ban.

No sane man of ordinary city experience can argue for a moment that such places can keep open without the knowledge and tacit consent

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of the police. The usual method is to close the public bar promptly at one, turn out the lights and give the impression from a casual view from the street that the place is closed. Through the medium of a back room, rooms above the saloon, a convenient restaurant or chop suey place, or the assignation hotel or flat run in connection, a new source of supply is opened and the sale of liquor goes on as long as there are purchasers. This has been the common practice in connection with saloons in all parts of the city catering to the trade of prostitutes or their following. The police seem to have an idea that if the bar is closed, the sale of liquor in so-called restaurants or chop suey joints, with or without food, is no violation of the ordinances.

The Commission suggests the amendment of the present rules, or the promulgation of further rules that will clearly show to the members of the department that the ordinance governing the sale of liquor between the hours of one and five a. m. applies to every spot in the city of Chicago not covered by a special bar permit.

DEPARTMENTAL ORGANIZATION.

The personnel of the Police Department consists of one inspector¹ for each police division, one captain for each police district, and such numbers of lieutenants, sergeants and patrolmen and other employes as may be appropriated by the City Council from time to time.

For purposes of police jurisdiction the city is divided into eight divisions, each in charge of an inspector. Each division is again subdivided into two or more districts in command of a captain. These are again divided into two or more police precincts, each theoretically in command of a lieutenant; each precinct having, in addition to the lieutenant in command, its complement of sergeants, patrolmen, operators and other employes. Theoretically, under the rules, the lieutenant on duty is responsible for conditions in the precinct; the captain for conditions in the district; the inspector for conditions in the division. However, the facts are that this ideal military organization exists in theory only. Few, if any, of the captains exercise any direct control or supervision over any precinct other than the one in which he establishes his

¹(At this point the report devotes considerable attention to the absolute inefficiency or utter neglect of duty on the part of the Inspectors of Police. Serious question is raised as to the utility of such an office, and the remark is pertinently made that "if other police officers and men were doing their duty according to the rules, there would be no need for this office." Since the publication of the report the inspectorships have been abolished. Each of the twenty-two police districts has a captain, and this captain is to be actually responsible for conditions within his jurisdiction. It is to be hoped that in the future there will be no captains' policies as there have been "Inspectors' Policies" in the past.—Eds.)

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headquarters. The inspector exercises a general supervision of his division, but that direct authority and responsibility contemplated by the city ordinances and the rules and regulations of the department are wholly lacking. With respect to the captains, while there is no specific provision in the rules requiring inspections of station equipment and personnel in their respective districts, yet the proper performance of police duty would require such inspection and supervision. The practice appears to be to have the lieutenants of the so-called sub-stations send daily reports, much along the lines of the inspectors' reports to the Chief of Police, which are signed by the captain as well, and forwarded to the inspector and by him to the Chief of Police. The lieutenants themselves do not appear to keep copies of these reports; at least, such is clearly the case in the Fifth Division. Few of these reports are signed by the officers themselves, and frequently are not even read by them. The whole system of daily reports is farcical in the extreme. In the past each station kept attendance records of its officers. These have been discontinued. So many important questions of police administration are liable to turn upon the matter of the exact location of commanding officers at specified times that it would seem to be absolutely essential that the station records show when an officer arrived on duty, when he left for purposes of patrol or other police duty, when he returned, and when he went off duty.

As to the exercise of jurisdiction and control by inspectors and captains in precincts other than those to which they are assigned, the testimony taken would seem to indicate clearly that the inspector and captain practically absolved themselves from any responsibility for the precinct other than the one to which they are assigned. The inspector of the Fifth Division when on the stand in the general investigation, was asked about conditions in the division west of Center avenue. He said that was outside of his precinct, and had to be asked again and again if that was not in his division, and if he was not responsible therefor. Each inspector examined practically disavowed any responsibility, except of the most technical kind, beyond his precinct lines.

In the Fifth Division not a single lieutenant of the three stationed there could give an intelligent explanation of his duties, and practically every one of the five officers in the 27th precinct passed the responsibility on to the others. Why there should be five officers in one precinct and one in the next, in view of the evident disregard of the provisions of the rules regarding territorial responsibility of inspectors and captains, has not been satisfactorily explained by anyone.

The position of General Superintendent of Police is analogous to that of a commander of an army. The experience of centuries has shown

the absolute necessity of providing such a commander with an adequate and intelligent staff properly equipped to perform the duties involved in the administration of such an organization. The same rule holds good as to any large business enterprise. When the position of inspector was created it was with the intention of providing the General Superintendent with the counsel, assistance and advice of trained police officers of long years of experience. As they now exist they are virtually independent commanders, frequently owing allegiance, not to the General Superintendent, but to the politicians most powerful in their respective territorial districts. The General Superintendent of Police should be able, from the reports of experienced, reliable and honest officers of high rank, to know what vice conditions are and how the laws and ordinances are being enforced in every part of the city. If Chief McWeeny had had such information from men on his own staff upon whom he could place reliance, he never would have made the statements which he did as a witness before the Commission. The daily reports of the inspectors, unverified, would naturally lead him to make the statements which he did. He simply admits that under the existing system he can know nothing of police conditions unless he personally makes an investigation.

The Commission, from its investigation, is now of the opinion that Section 1917 of the City Code should be amended so as to eliminate the requirement that the General Superintendent shall divide the city into divisions and districts and assign inspectors and captains to command the same, and that the rank of inspector be abolished. The Commission is further of the opinion that such number of captains and lieutenants as may be found necessary be assigned to staff duty at general headquarters, under the direct control of the General Superintendent, but subject to return to general duty at any time.

The methods in vogue in the Police Department, with regard to reports, orders and correspondence, are loose in the extreme and do not conform in many particulars to the rules.

Rule 29 of the Rules and Regulations provides that there shall be kept at each station twenty-eight varieties of records and reports. Careful consideration should be given to the matter of simplifying the record system and reducing the number of records. The Commission has been able to give but little attention to this matter, but from what little has been done it seems certain that the record system is an inheritance from the time when the department was comparatively small; that the same is cumbersome, with many useless entries, and that much valuable information which should be kept in the department is lost in the mass of routine stuff. Many reports are kept in the most slovenly and disorderly manner.

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In the matter of orders, the Commission finds from the testimony that the great majority of orders are given by telephone, and that no record thereof is kept. The same is true to a less degree in the matter of reports. A system should be devised whereby, with the least amount of effort, every order and report sent over the telephone would be recorded.

None of the stations—not even division headquarters—are supplied with typewriters, all reports being in longhand. Serious consideration should be given to the question of substituting clerks and stenographers for patrolmen now acting as secretaries for inspectors, captains and lieutenants. A patrolman is not selected for his clerical ability, and when detailed to clerical work he is frequently doing work which would ordinarily be done in a private corporation for from \$60 to \$75 per month, at a cost to the city of \$1,200 per year.

The rules specifically provide that in all official communications, titles and not names shall be used wherever practicable. The meaning of this is that a communication should be addressed, not to "Lieutenant Jones, commanding 5th Precinct," but to "The Commanding Officer, 5th Precinct," so that when a communication is received it will not be treated as personal and laid on the lieutenant's desk until he returns, but will be opened by the sergeant who is in command at that time. The evidence shows that important communications needing immediate attention, which were addressed by name and not title, had not received the attention required.

The rules also specifically provide that communications must be signed personally by the officer from whom they purport to come. The Commission has in its possession a mass of communications from inspectors, captains and lieutenants, not one of which is signed by the officer in person, but by some patrolman acting as his secretary. As a matter of fact, the inspector's perfunctory daily reports, which follow the same language and the same verbiage day after day, are not even brought to the attention of those officers.

Section 10 of Rule 7 provides for the keeping by desk sergeants of cards bearing the precinct number and post number, and on which shall be briefly stated all special orders, instructions, complaints, etc., relating to that post as they occur from day to day, and provide for the signature of the Patrolman on the post from time to time to indicate that he is fully familiar with all complaints and special orders regarding his post. With this rule conscientiously enforced, without any hampering influence from the station, the Patrolman on the post can clean up all questionable situations with great ease and accuracy, but here again it will be found that the rule in this regard is not being obeyed.

The Commission has heard testimony and has received communica-

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tions in vast number that complaints, either in writing, by telephone or by word of mouth, when they affect gambling, street walking, disorderly houses, all-night saloons, and similar violations, receive but scant courtesy at the stations or in the precincts where these conditions abound. Some complaint has also been made that the same rule applies to petty thievery, activities of pickpockets, and even of burglaries and robberies.

The method in vogue of desk sergeants writing verbal complaints on slips of paper, placing them on a spindle and tearing them up when an officer reports thereon, needs no comment.

The matter of running out and reporting on all complaints is of such vital importance to the individual citizen that the common expression by the citizen that it is of no use to make complaint at the station, should never be heard in the City of Chicago.

DISCIPLINE.

The necessity for strict discipline in a body such as the Police Department needs no argument. The Commission does not wish to be understood that it is in favor of the rigid, hard-and-fast rules of discipline in vogue in the regular army; but if individual efficiency is to be attained in the Police Department, a system approaching the military system must be installed.

Great improvements have been made in the matter of the appearance of the members of the department. The men are better uniformed, their uniforms are kept in better condition, and complaints which were rife a few years ago of the "sloppy" appearance of the members of the department, of men appearing on the street with coats unbuttoned, shields, badges and buttons unpolished and shoes unblackened, no longer prevail. As a whole, the uniformed men at all times present a creditable appearance, but in the other matters of discipline the department is vitally lacking.

Nothing can be more subversive of discipline than a patrolman calling his commanding officer by his first name, to be on terms of intimacy with his sergeants, or to be seen in public places eating and drinking, and particularly the latter, with the men under him. The converse is true when commanding officers habitually refer to the men under them by their first names and are generally on terms of equality with them. The very theory of rank in the Police Department means a breaking away from equality. The placing of one man in a position of official superiority above a number of others, in order to make his control bring forth the best results, means to a certain extent the elimination of equality.

If there is one great fault in the Chicago Police Department, it is the

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fact that to a large extent the sergeants do not exercise that degree of authority and responsibility which their title and increased pay demands. By virtue of the very equality common in the department, few of the patrol sergeants secure from the men under them that strict attention to duty and constant effort in the performance of police duty which the position of patrolman requires. The Commission has, without any particular effort to do so, secured reports in a comparatively short space of time of approximately 200 uniformed patrolmen violating departmental rules by loafing and lounging about saloons and other places when their duties required them to be on beat.

Commanding officers interviewed from time to time are almost united in the statement that they do not get the right sort of work out of the patrol sergeants, and few if any complaints of breaches of departmental discipline on the part of uniformed patrolmen are received from them. Any patrol sergeant who goes through a year of service without making a single complaint against a uniformed patrolman is certainly not performing his duty; yet the investigation has shown that but few patrol sergeants make any such reports.

It must not be understood that the Commission favors the species of espionage universally referred to in the department as "piperising," but unless the patrolmen can be made to perform their duties and to patrol their posts faithfully, through the efforts of the patrol sergeants, some system of checks upon their actions must be had. The patrolman who habitually loafs in saloons, cigar stores, restaurants, basements of apartment houses and other places, between the pulls of the box, must either be eliminated from the force or be made to perform his duty.

The rules further prohibit and fix a penalty for entering saloons while on duty not in the line of duty, as well as drinking intoxicating liquors therein. Uniformed patrolmen are constantly seen drinking in saloons. For years the record of the Trial Board shows that a very large percentage of the cases tried by it are attributable to the use of intoxicating liquors. Many of the complaints as to uniformed patrolmen being seen in saloons, when run down and verified from the records, show that the men complained of were not then on duty in the strict sense of the word. In other words, their eight-hour shift had not begun, or was completed; but the rules provide that although certain hours are allotted for the performance of ordinary duties, every member of the force will be considered as being always on duty.

Another fact tending to show lack of discipline and departmental demoralization is the practice of officers and men accepting free drinks, cigars and meals from the keepers of saloons and restaurants, many of which are constant violators of the law. If a patrolman is in the habit

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of accepting free accommodations of this character, he will be most apt to be lax in the performance of his duty when the person who has so favored him is guilty of an infraction of the law.

SPECIAL ASSIGNMENTS.

Most of these assignments are what are known as "soft berths," gained largely through influence and favoritism, political and otherwise. The assignment of patrolmen to duties that can be performed more efficiently and at a lower salary by other types of employes is an injustice to the taxpayers and a financial injury to the city.

The detailing of the men to private institutions of a charitable nature, no matter how worthy they may be, is another injustice. The same may be said as to officers doing work which should be paid for by the county, and on work which should be paid for by individuals or corporations. The use of patrolmen as messengers at a salary of \$1,200 per annum is in itself an absurdity. The public pays its patrolmen for police duty, and no special assignment should be made that cannot be said to be entirely of a police nature.

In the matter of the assignment of sergeants, both desk and patrol, no consideration whatever is given by the department to the number of men under command. The eight-hour shift is taken literally, regardless of the amount of work to be performed, and every station is furnished, as far as possible, with at least three desk and three patrol sergeants. The deficiency in this number, if any, is made up by the special assignment of acting sergeants.

The utter absurdity of the system and its application is shown by a comparison between the 1st and 16th precincts. In the 1st there are two regularly assigned desk sergeants and seven patrol sergeants, with a total force of over 400 on duty—an average of substantially one sergeant to every forty men. In the 16th, three desk sergeants and two patrol sergeants, with a total force of thirty-six men on duty, or an average of one sergeant to every seven men. It is even worse in the newly created 9th precinct, where they have one lieutenant and five sergeants, with six men on patrol duty. In the 7th precinct, on the day shift, one sergeant supervises the work of two patrolmen.

Whether the eight-hour shift stands or falls, regardless of the amount of work performed, there can be no excuse for the assignment of patrol sergeants to the supervision of the work of two or three, or even six men. They would better be replaced by patrolmen and leave the supervision to the lieutenant in command, or the desk sergeants. There can be no use in such a station for that number of sergeants, if a day's work is to be given for a day's pay.

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TRANSFER SYSTEM.

It is universally conceded that the transfer system now in vogue tends to deter the men of the department from the performance of their duties and to permit the use of favoritism. Transfers are made for three reasons:

First, at the request of the person transferred, in which case political influence is frequently used. Second, as a matter of discipline. Third, because of some act done by the person transferred, which is objected to by some person of influence, political or otherwise, against whom the act is directed.

Transfers as a matter of discipline may not in themselves be objectionable, but as a rule it would be far better to punish the offender by reprimand, fine, suspension or discharge, than to pass him on to some other officer who will again transfer him for any breach of discipline.

The third form is the most demoralizing. While a patrolman will not come out in the open and testify that he is deterred from performing his duty through fear of transfer, yet such is the case. Patrolman John Smith will not report a saloon open after one o'clock, if he is satisfied that the saloonkeeper has any influence whatever. If he does report him and finds the saloon open again the next night, he knows that he is not expected thereafter to report the fact. If he persists, he knows that he will be transferred to "the prairies." The same is true of gambling and all other forms of vice. This species of transfer should be entirely eliminated.

The rules provide that all members of the police force, from the patrolmen up, are required to keep track of and report on the movements, haunts and habits of all persons of well-known bad character. The evidence shows that this is not done except in the most haphazard manner, and with no uniform system in the various precinct stations.

Many commanding officers have complained vigorously of the vagrancy ordinance as applied to the class of persons known as "pimps." It applies as well to pickpockets and other thieves. It is shown by the evidence that pickpockets and hold-up men have regular haunts, usually in saloons, and it seems clear that they have no occupation other than that of crime; yet these saloons, known to the police, are permitted to harbor such persons without restraint, and many of them have the reputation, at least, of being "fences" for stolen goods.

The Commission has received more or less evidence that pickpockets and hold-up men are under police protection and pay for the same. A good deal of this payment is due to the plain-clothes men and not to the officers. The Commission is convinced that an honest endeavor on the

part of the Police Department to rid the city of all persons of this character would prevent the yearly recurrence of "the wave of crime."

It is admitted on all sides that the department is carrying on the active list many men who, by reason of age, habits or physical condition, are not fit to perform police duty. Many of these men are eligible for retirement, but through favoritism or the system are kept on the force for the simple reason that they prefer to draw full pay rather than the pension allowance. Efforts have been made to secure the retirement of these men, but without much actual success.

The Pension Law permits the retirement of any member of the force over fifty years of age, after twenty years of service. The law should be amended so as to provide for compulsory retirement upon reaching a certain age limit. This might be graded for the character of the service, but it would probably answer the purpose better if it were the same age for all—say sixty years. The law should also be amended so as to prohibit payment of pensions to a man who had been discharged from the force for any cause other than disability incurred in the line of duty.

There should be established in the department an annual or biennial medical and physical examination of all members of the department, in order: First, to check disease in its inception and to force men to keep in good medical and physical condition. Second, thereby to protect the pension fund. Third, to rid the department of men not able to perform their duties.

The Police Department should not be run upon sentiment, but as a purely business proposition. The pension allowance is liberal in the extreme, and there could be no reasonable complaint on the part of the members of the department if a compulsory retirement for age or disability were strictly adhered to.

The Civil Service Law requires the certification of the three highest on an eligible list, and gives the appointing power the right to select one of the three so certified. Commissions past and present have realized the abuse to which this provision of the law may be put, but this Commission does not believe that any commission since the law first went into effect has known that promotions have been paid for. Such, however, is unquestionably the fact. The practice has been for persons claiming the power to influence the selection to collect money from as many as possible of those likely to be certified, keep the amount paid by the successful ones, and repay those not selected, with the explanation that counter influence was too strong. The Commission is convinced that this has been done frequently without the knowledge of the appointing power.

The fact that the title of the person securing promotion in this way is doubtful, makes the securing of positive evidence in individual cases

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impossible. The mayor's order to select the top of the list hereafter, unless there is some specific reason against so doing, will eliminate this evil.

The rules provide that the lieutenants shall establish and conduct a general school of instruction at least once each week. This rule is ignored in ninety per cent of the precincts in the city; yet the ignorance of officers and men of the provisions of the Book of Rules, the orders of the department and the elementary law necessary to good police work, is admitted on all sides. The rules also provide for the establishment and conduct of a school of instruction for recruits. Such a school was established in the fall of 1910 and operated for some months with unqualified success. There should also be a school for officers of the lower grades, where, in addition to advanced instruction, there can be an exchange of ideas on police duty, pending cases, new laws and ordinances, and other matters of interest.

The organization, composed of members of the Police Department and known as the United Police of Chicago, is inimical to the best interests of discipline. Its original purpose, namely, to protect members of the department from suits for damages arising out of the performance of police duty, was in itself harmless, but there should be no necessity for such an organization. The city of Chicago should take care of such suits, and hold members of the department harmless, unless it clearly appears that the policeman sued has been guilty of the improper use of his power, or abuse of his authority.

The purposes of the organization, however, have been greatly enlarged, and now it defends its members at trials for breaches of departmental rules and regulations, collects and disburses funds to influence legislation, and has been charged with a conspiracy to secure salary advances by means of bribery.

The scandal arising over the last appropriation bill in connection with the increase of salaries asked for members of the department is sufficient in itself to call for the dissolution of the organization. Discipline cannot be enforced if the organization defends men for disorderly conduct, drunkenness, sleeping on post, maltreatment of prisoners, and abuse of citizens, and the numerous cases brought before the Trial Board.

CONCLUSIONS.

From the evidence obtained by it, the Commission has come to the following conclusions:

- (a) That there is, and for years has been, a connection between the Police Department and the various criminal classes in the city of Chicago.
- (b) That a bi-partisan political combination or ring exists, by and

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through which the connection between the Police Department and the criminal classes above referred to is fostered and maintained.

(c) That to such connection may be charged a great part of the inefficiency, disorganization and lack of discipline existing in the department.

(d) That aside from such connection, inefficiency also arises through faults of organization and administration.

(e) That the Police Department, as now numerically constituted, can enforce any reasonable regulation in regard to gambling, crime and other forms of vice, if honestly and efficiently administered, as well as perform all other routine police duty.

RECOMMENDATIONS.

The Commission at this time makes the following suggestions, not in the sense of finality, but to merely bring up for discussion the ideas that have come to it as a result of its investigation:

1. That the division of the city into police divisions and districts be abandoned.

2. That the position of inspector be abolished.

3. That captains be assigned to command important precincts, and lieutenants the remainder, and that each be held strictly accountable for conditions therein, these officers reporting directly to general headquarters.

4. That such number of captains and lieutenants be detailed to general headquarters as to constitute an efficient working staff for the General Superintendent, at all times subject to return to former duty.

5. That a system of inspection be installed that will insure the proper performance of police duty on the part of officers and men.

6. That improved methods of reports and correspondence be introduced and the record system thoroughly overhauled and revised, and headquarters' records consolidated as far as practicable.

7. That all assignments to "special duty" other than city police duty in the strictest sense, be discontinued, to the end that every available patrolman may be on beat.

8. That the present method of assignment of sergeants be revised so as to secure, as far as possible, equality as to numbers of men supervised.

9. That transfers as a punishment or at the request of persons outside the department be discontinued.

10. That the standard of promotion examinations be raised.

11. That so far as possible there be established in the Police Department a system of efficiency markings that will insure, through means

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practically automatic, the recording of efficiency for purposes of promotion of every officer or other person in the department.

12. That a system of ascertaining and recording individual efficiency, as nearly automatic as possible, be installed and maintained, and that as a factor thereof annual or biennial medical examinations be held.

13. That in all promotions the person at the top of the list be taken unless some valid and substantial reason exists why he should not be promoted.

14. That an age limit be fixed for compulsory retirement of members of the department.

15. That the Police Pension Law be revised so as to prevent payment of pensions to persons discharged from the force.

16. That the possible appointment and use of substitute patrolmen be considered.

17. That the School of Instruction for recruits be re-established and a system of station schools of instruction, uniform throughout the precincts, be devised and installed, as contemplated by the rules, and that a school for officers be established.

18. That the rules regarding vice be revised and amplified.

19. That the ordinances prohibiting street-walking be amended so as to provide for a graded increase of fine for each offense, eliminating judicial discretion as far as possible.

20. That the laws regarding vagrants and persons of known bad character be studied with a view to a revision of the same.

21. That a card index system be installed in every precinct station that will show at all times, up to date, the name, description, character, haunts, habits, associates and relatives of every known person of bad character, residing in or frequenting such precinct, including pick-pockets, hold-up men, safe-blowers, confidence men, "pimps," prostitutes and people who have operated gambling or gaming houses.

22. That immediate and stringent measures be taken to disband the organization known as the United Police, and to prevent the creation of any organization whose influence and tendency is to break down departmental organization and efficiency.

(Since the above was put into type, the Commission has extended its investigation of the Chicago police force. Following are the conclusions and recommendations of the Commission in addition to those already cited. Eds.)

That with the department as now organized efficient administration cannot be expected nor secured.

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That amendments to the laws and ordinances also are necessary to a higher degree of efficiency.

The Commission recommends:

That steps be taken at once looking towards the complete reorganization of the department of police along logical and scientific lines, retaining everything of value, remedying existing faults and removing the service as far as possible from the influence of politics.

That in such reorganization due consideration be given to the creation of an efficient staff of carefully selected men to assist the executive head in the administration of the department.

That a study be made of secret service methods in use in the federal service and in other cities of the United States and abroad, with a view of creating a detective or secret service force in this city which will be up to date, progressive and useful.

That the control of traffic in the central portion of the city be placed in charge of a single commanding officer, and that responsibility for all other police duty in the First precinct be placed upon the precinct commander.

That an effort be made to secure the establishment of courses in police work in one or more of the city's universities or training schools.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

PROFESSORS CHESTER G. VERNIER AND ELMER A. WILCOX.

APPEAL AND ERROR.

Commonwealth v. Comporto, Pa., 81 Atl. 906. *Invited Error*. Where, at the request of defendant, the court strikes out a portion of his confession relating to his criminal record, he cannot afterwards demand that the entire confession be stricken out on the ground that it must go in as a whole, since he cannot complain on appeal of the action of the court at his own request in excluding a portion of the confession.

BIGAMY.

Bennett v. State, Miss., 56 So. 777. *Proof of Divorce*. In a prosecution for bigamy, the trial court charged that the state had made out a *prima facie* case by proof of a legal marriage, a subsequent marriage to another woman, and that the first wife was not dead, and that the burden was upon the defendant to prove, if he could, that the first marriage had been dissolved by divorce. Held, that the presumption which exists in civil cases, that the first marriage had been dissolved by divorce before the second was contracted, does not apply in a criminal prosecution for bigamy. The charge of the court was therefore correct. The conviction was affirmed.

BURGLARY.

Alinis v. State, Tex. Cr. App., 140 S. W. 227. *Private Residence*. Defendant was convicted of burglary under a statute which applied to breaking and entering a "house." He contends that the evidence showed a violation of a different statute, relating to "private residences." He broke into the middle room of a store-house which was divided into three rooms. A restaurant was carried on in the front room, the cooking was done in the middle room, the prosecutor and his wife slept in the rear room. Held, that the cook room was not part of a private residence. The conviction was affirmed.

CHANGE OF VENUE.

State v. Clifford, Wash., 118 Pac. 40. *Construction of Statute*. A statute provided for a change of venue for prejudice of the judge, on motion supported by the affidavit of the party or of his attorney. The statute did not state when the application should be made. A defendant, judging from the rulings made on certain preliminary matters that the judge was prejudiced against him, filed a motion and affidavit for a change of venue, which was denied. He then sought to enforce a change by mandamus. The court said that under the statute the right to a change of venue was absolute if the conditions imposed were complied with. But if the statute were applied literally the application for a change might be made at any time before the entry of judgment. The legislature could not have intended to so handicap the courts in the enforcement of the law, hence there was need of construction. It could not have been intended that a party could submit to the jurisdiction of the

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court until from some ruling he became fearful that the judge was not favorable to his view of the case, and then ask for the change. Hence it was held that the application was properly denied, as it was not made until orders had been made in the case, though those orders were not on the merits.

CIRCUMSTANTIAL EVIDENCE.

Ex Parte Hages, Okla. Cr. App., 118 Pac. 609. *Cable Theory*. The petitioners were in custody awaiting trial, and applied for a writ of habeas corpus, on the ground that there was no evidence which showed that they were guilty of the charge upon which they were held. The evidence against them was wholly circumstantial. No one circumstance testified to was sufficient to prove their guilt, but each of them, standing alone, might be entirely consistent with innocence, yet when all were taken and combined together, they produced an irresistible conclusion that the defendants were guilty. Held, that circumstantial evidence is not like a chain, but like a cable. "No chain is stronger than its weakest link, and will never pull or bind more than its weakest link will stand. With its link broken, the power of the chain is gone; but it is altogether different with a cable. Its strength does not depend upon one strand, but is made up of a union and combination of the strength of all its strands." The petitioners were remanded into custody.

CONSTITUTIONAL LAW.

People v. Robinson, 132 N. Y. Supp. 674. *Equal Protection of Laws*. Discrimination between races.

In proceedings before a magistrate for disorderly conduct, consisting in sending to a woman letters declaring love and proposing and insisting upon marriage, the reception over defendant's objection of evidence that he is of the negro race, and the taking of that fact into consideration by the magistrate, do not violate any constitutional right of the defendant, and do not deprive him of the equal protection of the laws, nor discriminate against him on account of race or color.

DISORDERLY CONDUCT.

People v. Robinson, 132 N. Y. Supp. 674. *Elements of the Offense*. Where a man, upon slight acquaintance, sends to a woman letters declaring love and proposing and insisting upon marriage, notwithstanding requests through a third person to desist, and his failure to receive any replies, he may be found guilty of a violation of Consolidation Act, Sec. 1459, authorizing any police justice to have brought before him to answer the charge of disorderly conduct any person guilty of such disorderly conduct as in the opinion of the magistrate tends to a breach of the peace.

EMBEZZLEMENT.

State v. Ensley, Ind., 97 N. E. 113. *Necessity of a Demand Under Statute Relating to Public Officers*. Burns' Ann. Stat. 1908, Sec. 2284, requiring every county officer receiving money in his official capacity to pay over, at the end of his term, to his successor, all moneys in his hands, and declaring that any county officer failing to so pay over such moneys when called on to do so shall be guilty of embezzlement, when construed in the light of the history of the legislation on the subject as originally enacted in 1883, and the judicial construc-

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tions placed on the original act, does not require a demand by the successor to make the predecessor guilty of embezzlement for failure to pay over money in his hands, so that an indictment charging a county treasurer with embezzlement need not allege that a demand for the delivery of the money by the accused to the successor in office was made.

ERROR.

Coates v. State, Ala. App., 56 So. 6. *Wrong Jury List*. The court ordered the sheriff to summon the jurors specially drawn and to serve upon the defendant a list of all the jurors summoned for the week in which the trial was set. By a mistake, the sheriff served on the defendant the list of jurors for the week after the trial. On discovering the mistake, he then served the proper list. The first list showed upon its face that it was not the list from which the jurors to try the defendant would be selected. Held, the service of the wrong list was no ground for quashing the venire subsequently served on the defendant.

Dawson v. State, Fla., 56 So. 677. *Proof of Prejudice*. The trial judge had given an instruction upon the right of police officers to make arrests without warrant, although there was no evidence that an arrest had been made. The Appellate Court was satisfied, from the entire record, that the defendant was not and could not have been injured by this charge. Held, that upon a writ of error, the points at issue are presumed to have been fairly and impartially tried and determined in accordance with the law, and the final judgment is presumed to be correct. This presumption must be met in the Appellate Court and overcome by the plaintiff in error. "It is incumbent upon him to show that the different rulings of the trial court of which he complains, or some of them, are so infected with errors as to call for a complete reversal of the judgment. The mere fact that a technical error was committed in the trial court in some of its rulings, may not be sufficient. The errors must have been harmful and prejudicial to the rights of the plaintiff in error." As no reversible error was shown, the judgment was affirmed.

Coleman v. State, Okla. Cr. App., 118 Pac. 594. *Proof of Prejudice*. On a trial for perjury, the court submitted the materiality of the false testimony to the jury. The Appellate Court held that the testimony so submitted, was material, but said that if it was error to leave it to the jury, the defendant could not have been harmed thereby, as it gave him an additional opportunity of escaping punishment, if the jury had erroneously decided that the evidence was not material. "The doctrine of this court is that no man can be heard to complain of the commission of an error upon his trial, unless he can reasonably show by the record that he suffered injury on account of such error. To secure the reversal of a conviction in this court, the burden is upon the appellant to show both error and injury therefrom. In other words, before error committed on trial, will be ground for reversal, it must reasonably appear from the inspection of the entire record that such error deprived the appellant of some substantial right and thereby worked to his injury." The conviction was affirmed.

Still v. State, Tenn., 140 S. W., 298. *Admission of Incompetent Evidence Is Prejudicial*. On a trial for murder, a dying declaration was received. It accused defendant of the crime, stated the circumstances, and disclosed jealousy as a motive. Held, that while the statements identifying the perpetrator and

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narrating the circumstances of the crime were properly received, the statement showing jealousy was improperly received as it related to a past transaction, not part of the *res gestae*, and involved a threat made by defendant. As there was no other evidence of motive or of threats, this evidence was prejudicial. The court cannot inquire whether if this statement be disregarded the lawful evidence sustains the verdict, that is, for the jury. The constitution guarantees a trial by jury. This means a trial upon competent legal testimony. "It is only where the court can see that the incompetent evidence admitted did not prejudice the defendant in the trial court that this court will consider and determine the case upon the facts." The conviction was reversed.

ERROR AFTER VERDICT.

People v. Scheuren, 132 N. Y. Supp. 1025. *Cure by Re-sentence.* Defendant was indicted for "feloniously and extorsively" attempting "feloniously and extorsively to obtain" money, and was convicted, and sentenced to state's prison for not less than three years nor more than five years and six months. The threat was verbal, and defendant was guilty of a misdemeanor only. Held, that, as the error in sentencing defendant occurred after the verdict, it does not affect the conviction and the proper procedure is to re-sentence the defendant.

EVIDENCE.

State v. Stapp, Wash., 118 Pac. 337. *Testimony of Accomplices.* A conviction may be sustained although the defendant's connection with the crime is shown only by the uncorroborated testimony of accomplices, and though there are some inconsistent statements in their testimony.

Martin v. State, Ala. App., 56 So. 3. *Illegal Search.* The defendant was sitting on a porch of a house owned by a mining company. The manager of the mines and a deputy sheriff came up. The manager drew a pistol and ordered the defendant to throw up his hands and when his hands went up, the manager ordered the officer to search the defendant's person and valise. They found twenty-eight half pints of whisky in his suit case. On trial for violation of the prohibition law, the manager and deputy sheriff were permitted to testify as to finding the whisky in the suit case. Held, the evidence was admissible, even though the search by the parties arresting him may have been illegal.

People v. Jennings, 96 N. E. 1077. *Evidence of Finger Marks—Admissibility.* Where, on the issue of identity of accused as the person committing a crime, there was evidence of the imprint of finger marks on the fresh paint on a railing of the house in which the offense charged was committed, photographs of the imprint and of finger prints of accused were admissible in evidence for comparison, together with the testimony of experts that the two sets of prints were made by the fingers of the same person, the accuracy of the photograph not being questioned.

The classification of finger-print impressions, and their method of identification, is a subject requiring special study, and persons who have made a special study of the subject are competent to testify as experts and to give their opinion that two sets of finger prints were made by the same person.

EXPERT WITNESS.

Odum v. State, Ala., 56 So. 913. *Non-Medical Witness.* A person who has handled a great many insane persons and has observed and studied them

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while they were in his charge, being transferred from one place to another, and has "lately read medical works on the subject and studied in that way," is not qualified to testify as an expert on insanity. "As a general rule, only medical men, that is, persons licensed by law to practice the profession of medicine, can testify as experts on the question of insanity. . . . An exception may perhaps be recognized where the witness has made a protracted and systematic study of mental science and disease under approved conditions."

EXTORTION.

In Re Shepard, Cal., 118 Pac. 513. *By Securing Loans*. Defendant was a member of a city council. He solicited loans from parties having petitions for the granting of franchises or privileges by the council, or having large claims against the city, while their petitions or claims were pending or accruing, and moneys were advanced to him on his unsecured notes unwillingly by these parties to prevent unfavorable official action by him. It was not charged that the defendant voted in favor of any of these claims or petitions, when, to protect the rights and interests of the public, he should have opposed them. Held, that it is extortion for a public official to demand money as a condition of doing his duty, and more especially if it is demanded as a condition to allowing a just claim against a public corporation.

EXTRADITION.

Ex Parte Wilson, Tex. Cr. App., 140 S. W. 98. *Kidnaping*. The relator was unlawfully seized in Mexico and forcibly brought across the international bridge at El Paso. On the American end of the bridge he was arrested by El Paso officers, who were guarding the bridge during the Mexican revolution, as a fugitive from justice from Nevada. The governor of Nevada issued requisition papers and the governor of Texas issued a warrant directing that the relator be delivered to the agent of Nevada. Relator then brought habeas corpus. Held, that as the El Paso officers were not shown to have had anything to do with the case till after relator had been brought across the boundary, the arrest by them and subsequent detention were lawful. Query whether the result would have been the same had the officers participated in the illegal seizure in Mexico. The relator was remanded into custody.

FALSE PRETENSES.

Horton v. State, Ohio, 96 N. E. 797. *Defenses*. It is no defense to an indictment for obtaining money by false pretenses that the transaction in which the money was so obtained was unlawful.

FORGERY.

People v. Lewinger, Ill., 96 N. E. 837. *Materiality of Alteration of a Check*. Under the Negotiable Instruments Act, Sec. 17, providing that where the sum payable in a check, etc., is expressed both in words and figures, and there is a discrepancy between the two, the sum expressed by the words is that payable, if the words are unambiguous, where a check recited that the sum payable was "\$2,500" and the words in the body of the check were "twenty-five hundred and no/100 dollars," the alteration of the figures so as to read "\$2,500/00" did not change the legal effect of the instrument, so as to constitute forgery.

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INDICTMENT AND INFORMATION.

Davis v. State, Tex. Cr. App., 140 S. W. 349. *Ownership*. An information for larceny alleged that the property of J. S. was stolen. The proof was that it belonged to J. S. and E. S. as partners. A statute provided that when property is owned in common or jointly by two or more persons, the ownership may be alleged to be in all or either of them. Held, there was no variance.

Commonwealth v. Roberts, Ky. App., 140 S. W. 312. *Immaterial Repugnancy*. One paragraph of an indictment for bribery charged that the offense was committed on the "27th day of February, 1911," another paragraph alleged that it was committed "at the November election, 1910." As it was manifest from the indictment that the offense intended to be charged was committed at the November election, the insertion of the erroneous February date did not and could not mislead the defendant. Hence the judgment overruling a demurrer to the indictment was affirmed.

Chapman v. State, Tex. Cr. App., 140 S. W. 441. *Sufficiency*. A statute made it criminal to "bet or wager any money, at any game of cards, except in a private residence occupied by a family." Defendant was convicted on an indictment charging that he did "unlawfully bet and wager money at a game played with cards." Held, that the indictment was fatally defective because it did not negative the exception. The conviction was reversed and the case dismissed.

State v. Carruth, Vt., 81 Atl. 922. *Negating Exceptions*. The mere fact that an exception is contained in a section of a criminal statute subsequent to that defining the offense, or in a later statute, is not conclusive that it need not be negated in an indictment, the true test being whether the exception is so incorporated with the enactment as to be a material part of the definition or description of the offense.

INSANITY.

Adair v. State, Okla. App., 118 Pac. 416. *Burden of Proof*. The defendant is presumed to be sane, and this presumption of law stands until it is overcome by the evidence in the case. If any evidence is introduced, tending to prove that the defendant was insane at the time of the commission of the act charged, then the burden of proving the sanity of the defendant devolves upon the prosecution, and the state is bound to establish the sanity of the defendant, like all other elements of the crime, beyond a reasonable doubt.

INSTRUCTIONS.

Irving v. State, Miss., 56 So. 377. *Circumstantial Evidence*. An instruction that circumstantial evidence "may arise so high in the scale of belief as to generate full and complete conviction beyond a reasonable doubt, and when it does arise so high in the minds of the jury as to convince them of the defendant's guilt beyond a reasonable doubt and to a moral certainty, then they are authorized to act upon it and convict the defendant," is fatally defective, because it omits the necessary qualification, that circumstantial evidence, in order to prove guilt beyond a reasonable doubt, must exclude every reasonable hypothesis than that of guilt.

PAROLE.

Ex Parte McClure, Okla. Cr. App., 118 Pac. 591. *Illegal Parole by Court*. The defendant was convicted of a misdemeanor, sentenced to the county jail

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for a period of six months and committed. After he had been imprisoned a month, he was discharged by the court on giving an appeal bond, and the time for perfecting his appeal was extended. It was agreed with the judge that the appeal would not be perfected, but that the prisoner would be discharged on probation during his good behavior. He was required to and did report to the judge until notified that he need not report further. Later he was rearrested and committed to the county jail to serve out the sentence. The constitution vested the power to grant a parole in the governor. The court did not have such power. Held, that as the judgment had not been stayed as provided by law, and the defendant had not served his sentence and was at liberty, he might be arrested as an escape and ordered into custody upon the unexecuted judgment.

PERJURY.

State v. Parrish, La., 56 So. 503. Oath Not Required by Law. In an affidavit made for the purpose of obtaining a saloon license, the defendant falsely swore that he had never been charged with violating any of the laws of the State or municipality. The statute under which the license was granted did not require that the applicant should make oath that he had not violated any such law. Held, that the oath must be administered in accordance with the law in order to make one who has sworn falsely guilty of perjury, and that it must clearly appear that the matter sworn to was required by law. The ruling of lower court quashing the indictment was affirmed.

RAPE.

People v. Lewis, Ill., 96 N. E. 1005. Harmless Error. In a prosecution for rape, where the evidence tended to show that the act had been consummated, and not that a mere assault had been made, the giving of an instruction that an assault with an intent to commit any felony shall subject the offender to imprisonment not less than one nor more than 14 years, while erroneous, was not prejudicial to the accused.

RIGHT TO SPEEDY TRIAL.

State v. Lewis, Kan., 118 Pac. 59. Delay Caused by the Defendant. A statute provided that a person accused of a criminal offense should be discharged if he was not brought to trial before the end of the third term of the court after the information was filed, unless the delay happened on his application or was occasioned by want of time to try the case. The defendant was not tried at the first term after the information was filed. At the second term the judge was sick and a pro tempore judge was elected and qualified. The defendant objected to the jurisdiction of this judge and the case was continued. At the third term, defendant objected to the jurisdiction of the pro tempore judge and the case was again continued. At the fourth term, the defendant moved for a discharge. Held, that as the delay was due to the defendant's objection to the pro tempore judge, "the delay happened on his application," within the meaning of the statute, hence the defendant was not entitled to be discharged.

SELF-DEFENSE.

Lett v. State, Ala. App., 56 So. 5. Arming With a Deadly Weapon. Defendant and deceased were on unfriendly terms. The deceased, accompanied by two

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men, and armed with a Winchester rifle and a pistol, went to the defendant's gate and called him to come out, saying he wanted to see him a minute. The defendant picked up his gun, walked towards the deceased, and shot him. It was disputed whether the shooting was in self-defense. Held, that if the defendant armed himself, not for the purpose of aggression, but for the purpose of defense, he did not thereby lose the right to invoke the doctrine of self-defense,

SELF INCRIMINATION.

People v. Reichman, 132 N. Y. Supp. 556. Where a person indicted for crime is subpoenaed before the grand jury and questioned as to a transaction connected with the charge on which the indictment against him was based, and he refuses to answer on the ground that his answer might tend to incriminate him, and he is then taken before a justice of the Supreme Court, who directs him to answer the questions, which he then did, his conviction is of such doubtful validity that a certificate of reasonable doubt will be granted; his rights having been preserved by proper motions, objections and exceptions.

NOTES ON CURRENT AND RECENT EVENTS.

ANTHROPOLOGY—PSYCHOLOGY—MEDICINE

Anthropological Study of Criminals in Belgium.—(From *Revue Penitentiaire*. From Belgium comes government recognition of the practical value of scientific investigation of the criminal classes. In connection with the prison of Forest there has been established by royal order a laboratory of anthropology for the collection and correlation of the results of anthropological investigation concerning its prisoners.

The Minister of Justice, in his report to the king, states that anthropological investigations concerning the characteristics of prisoners have, besides the well-recognized scientific value, a practical value in the penitentiary regime. He speaks of the dual aim of the penitentiary—punishment and reform—and holds that to attain the last it is necessary to obtain as much data as possible concerning the individual. It is necessary, he states, to make an investigation of his origin, his native environment, the environment in which he developed and that in which he committed the crime, also to make a thorough physical and mental examination. From the resulting data conclusions will be drawn which will determine the most efficient mode of treating the individual prisoner while confined and often also the precise degree of his guilt.

CLARA HARRISON TOWN, Lincoln, Ill.

S. S. Gregory on the Treatment of Insane Murderers.—The account of the meeting of the Wisconsin branch of the Institute of Criminal Law and Criminology, which was contained in the *Milwaukee Free Press* for December 2, 1911, gives a great deal of space to the recommendations made by President Gregory of Chicago in his address at the meeting of the Wisconsin branch, which was, on the date mentioned, in session at Milwaukee. Mr. Gregory insists upon defining insanity as a chronic disease and upon recognizing it, therefore, as a physical ailment. Its existence or non-existence is a question for experiments and high-minded medical experts to decide. He referred to the old idea that the one great aim of punishment was vengeance and to the fact that this idea was losing its hold and that even the idea that punishments were valuable for their deterrent effect was sometimes denied. If, as the direct result of disease, a man does what he would not otherwise do, he does not merit punishment.

At the same meeting Col. Nathan William MacChesney emphasized the slogan of the day, which is individualization of punishment, considering the act committed, the offense against society, and protection of society, yet notwithstanding, with an eye always to the offender, his motives, his environment, his limitations, his possibilities, and applying the remedy with an eye to the future, so as to reclaim the individual, if possible, for future usefulness to his community without at the same time sacrificing the real demands of society.

R. H. G.

INJURY TO THE HAIR

Jersey Justice—Overlooking the Patient.—At the time of the conviction of the would-be assassin of Mayor Gaynor much press comment was indulged in on the celerity of so-called Jersey justice.

Naturally there had been a conflict, a conflict which to an open-minded man would seem to be the last in the world to be found. The defense maintained, and mainly through the evidence of Dr. Henry A. Cotton of Trenton State Hospital, that the prisoner was suffering from general paresis, that he not only showed the physical signs, but the mental characteristics, and, furthermore, analysis of the cerebrospinal fluid showed the presence of lymphocytes, of positive globulin, and positive Wassermann reaction.

There never was any question, nor is there, that Dr. Cotton's standing is of the highest, and it is well recognized among the psychiatrists of the day that both by training and experience he is a man whose word is entitled to respectful credence.

There were those opposed who, while granting that some of the physical signs were present, were yet incapable of seeing, or unwilling to see, the mental features, and against the psychological and serological findings the objection was raised that a technical method, which is recognized the world over as representing the highest advance in scientific technique, was one that was not used. In the face of most unbiased evidence the prisoner was convicted and sent to jail, and now, within two or three months of the trial, we find that it is recognized, even by laymen, that he is suffering from general paresis and must be sent to the Trenton State Hospital.

This points a moral and adorns a tale. The older psychiatrists are able to diagnose a case of dementia praecox, of general paresis, of manic depressive insanity when the disease is so far advanced as to make it obvious to the man on the street that the patient is suffering from mental disease.

The facilities of modern psychiatry are such that the real psychiatrist should be able to make a diagnosis before the layman can. Refined methods of technic, advanced modes of examination, have come into the field and are bound to stay. We await with much interest the post-mortem report which undoubtedly Dr. Cotton will supply.

SMITH ELY JELLIFFE, New York.

Injury to the Hair and Its Forensic Significance.—Röttger (*Archiv für Kriminal-Anthropologie und Kriminalistik*, XLIV, 1911, 209-248) has set forth in this article the various changes which human hairs undergo as the result of age, disease and external injury.

Pathological Conditions, such as fungoid growth, cause both mechanical and chemical damage, as the splitting of the shaft, due to destruction of the cement substance, in trichoptilosis and fevers, with gradual decay from disturbed nutrition.

Normal Secretions, as sweat and urine, cause a loss of the cylindroid form of the shaft, the cortex is partly peeled off by the acids, the macerated shafts become brittle and present the characteristic brush-like appearance.

Heat effects changes in both structure and color. The intercellular air spaces in the cortex become disturbed, and vacuoles may appear in the medulla and the outline of the hair becomes styslike. Scorched areas, as from the flame from pistol shots, show fibres split off from the shaft.

Shooting off firearms at close range produces characteristic changes, not

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due to the heat alone, bending and tearing of the hair shaft, fissures in the hair, clean cuts and longitudinal fractures.

In direct injuries the lesions are modified by the nature of the underlying surface and the character of the weapon.

Injuries produced by an instrument with a flat surface against the flat portion of the skull are characterized by a long ribbon-like flattening of the hair shaft. On the convex portion of the skull the hair becomes spindle formed. Blunt instruments produce sharply circumscribed rosette-like enlargements, while objects with sharp edges produce fractures with broadening and splitting of the ends.

Changes produced by injuries inflicted *after death* depend upon the time that has elapsed since the assault and upon the influence of air, water, blood, etc., all of which conditions Röttger has especially studied. He found that hair allowed to soak in blood for six months showed definite changes, as longitudinal fissures of the shaft and splitting off of fibres.

He further placed hair in the thermostat at 40 C. for ten days in a mixture of blood and tissue fluid, but found no change in human hair, beyond a reddish brown discoloration, while rabbit's hairs showed fractures and complete disappearance of pigment.

The two chief medico-legal aspects of the changes which human hair undergo concern: (1) The possibility of determining the nature of the injury inflicted, and (2) the possibility of identification or of determining the age of the individual.

To the first question Röttger answers that in general neither the injuries inflicted during life, nor after death, produce characteristic and reliable changes; further, that we can only form an opinion as to the nature of the injury when the body region to which the hair belongs, and the surrounding conditions, are known and considered.

Identification is not always possible, on account of the color changes which hair is subject to after death. The age of the hair is equally uncertain, for in favorable conditions hair has been preserved for hundreds of years, but in conditions favoring decomposition the destructive changes are rapid and set in soon after death.

SMITH ELY JELLIFFE

Homosexuality and the Law.—There is no doubt, writes Bruno Meyer, (*Archiv für Kriminal-Anthropologie und Kriminalistik*, XLIV, 1911, 235-249), that inversion of the sexual instinct is congenital in the vast majority of cases and that very little can be done. It is often acquired, however, during adolescence, before the sexual instinct is completely differentiated, when the nature of the influence to which the individual is subjected determines the direction of the instinct. Meyer thinks that preventive and restrictive measures should be directed chiefly towards this form, as it is precisely during adolescence that the examples of homo-sexuals—among the female sex as well—are most dangerous, especially as psychic hermaphroditism is not uncommon.

The explanation of this phenomenon is found in the fact that the male and female sexual organs are developed from the same germinal layer, so that if differentiation has not been complete the individual may anatomically belong to one sex and psychically to the other. Psychic hermaphroditism includes all transition types between normal sexual tendency and total inversion.

Homosexuality may also be acquired by adults who have experienced

BILL TO ESTABLISH A CHILDREN'S BUREAU

heterosexual inclination, but in whom a revulsion of feeling has been caused by some disagreeable experience, and later through seduction or bad example the sexual instinct is completely inverted.

We know that the sexual desire originates in the cerebral cortex and not in the sexual organs; therefore, it is clear that any misdirection of the desire indicates some anomaly or disease of the cortex. Homosexuality is therefore parallel to insanity, and it becomes the duty of the state to guard the population against this evil by enforcing certain measures, as it does in insanity.

It is generally accepted that *degeneration* is the fundamental cause of homosexuality. Degeneration, on the other hand, is the direct outcome of our present social order and exists only in man and domestic animals. As man advances in civilization degeneration increases, because better care is taken of epileptics and the mentally defective, and they are allowed to procreate, though their offspring are invariably degenerates. As homosexuality is a distinct manifestation of degeneration, it is a direct product of our culture.

By rendering it punishable, we cannot prevent the cause—degeneration—but the fear of punishment would prevent those whose sexual instinct is not differentiated from yielding to the as yet faint impulse.

The present German penal code says that acts of unnatural debauch committed between persons of the *male* sex shall be punished with imprisonment—not less than six months—and loss of civic rights.

It is now proposed to include the female sex and to extend the term of imprisonment to five years.

Meyer states that in his opinion there is no ground for constituting the performance of some moral offense a penal offense when performed by two adults who have given their mutual consent, but the law must ensure that no boy or girl, who has not yet reached the age of discretion, should be seduced or abused by some other person. The age limit is at present 16 years, but he agrees with Wulffen that it should be raised to 20, or, better still, to 21 for both sexes. As regards the inclusion of the female sex, it is absolutely necessary for the checking of this evil.

In summing up, Meyer states that homosexual acts should be punishable whenever (1) performed upon an individual under the age limit, (2) performed upon adults without consent. Compulsion here includes the use of hypnotics or narcosis.

Attempts at seduction, where proven, should also be punishable.

SMITH ELY JELLIFFE.

COURTS, LAWS.

A Bill to Establish in the Department of Commerce and Labor a Bureau to Be Known as the Children's Bureau.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that there shall be established in the Department of Commerce and Labor a bureau to be known as the Children's Bureau.

SEC. 2. That the said bureau shall be under the direction of a chief, to be appointed by the President, by and with the advice and consent of the Senate, and who shall receive an annual compensation of five thousand dollars. The said bureau shall investigate and report upon all matters pertaining to the welfare of children and child life, and shall especially investigate the questions

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of infant mortality, the birth rate, physical degeneracy, orphanage, juvenile courts, desertion, dangerous occupations, accidents and diseases of children, employment, legislation affecting children in the several states and territories, and such other facts as have a bearing upon the welfare of children. The chief of said bureau may from time to time publish the results of these investigations.

SEC. 3. That there shall be in said bureau, until otherwise provided for by law, an assistant chief, to be appointed by the Secretary of Commerce and Labor, who shall receive an annual compensation of two thousand four hundred dollars; one private secretary to the chief of the bureau who shall receive an annual compensation of one thousand five hundred dollars; one statistical expert, at two thousand dollars; two clerks of class four; two clerks of class three; one clerk of class two; one clerk of class one; one clerk, at one thousand dollars; one copyist, at nine hundred dollars; one special agent, at one thousand four hundred dollars; one special agent, at one thousand two hundred dollars; and one messenger, at one thousand four hundred and forty dollars.

SEC. 4. That the Secretary of Commerce and Labor is hereby directed to furnish sufficient quarters for the work of this bureau at an annual rental not to exceed two thousand dollars.

SEC. 5. That this Act shall take effect and be in force from and after its passage.

The above bill was introduced by the Hon. A. J. Peters on April 13, 1911. It is known as H. R. 4694. It has since become a law and Miss Julia Lathrop of Chicago has been made head of the Bureau.

R. H. G.

Proposed Penal System Commission Law of Maryland.—An act creating the Penal System Commission, and providing for the appointment of the members thereof and of a secretary thereto and employes thereof; prescribing its duties and directing it to investigate the penal laws and penal system of the state and empowering it to enter and fully investigate and inquire into the management and conduct of every institution in the state of Maryland wherein any person may be sentenced to confinement for violation of any law of the state, to examine all books and other records of any such institution and to summon witnesses and examine them under oath administered by an officer of the state authorized to administer oaths; and directing said commission to report the results of its investigations, with such recommendations as it may approve, to the next session of the General Assembly and appropriating the sum of \$10,000, or so much thereof as may be necessary, for the payment of the expenses of said commission and salaries to the secretary and clerks thereof.

Whereas, it is deemed desirable to create a commission to inquire into and consider the provisions of the laws and the administration thereof relative to the sentence and probation of persons convicted of offenses, the length of service prescribed and imposed for the several offenses, the parole, probation and indeterminate sentence systems, the method of employment of convicted persons while undergoing sentence, and such other matters relative to the penal laws and the administration and enforcement thereof as said commission may deem advisable, and to report to the next session of the General Assembly the results of the investigations and the conclusions of the commission with recommendations of legislation that will adequately protect the people of the state from crime and at the same time work for the punishment and correction of the persons convicted; therefore

SECTION 1. Be it enacted by the General Assembly of Maryland, that a

PROPOSED PENAL COMMISSION LAW OF MARYLAND

commission by the name of the Penal System Commission be and the same is hereby created consisting of eleven members, as follows: One member of the Senate, to be appointed by the President thereof; one member of the House of Delegates, to be appointed by the speaker thereof; two members to be appointed at large by the Governor, and the following members to be appointed by the Governor: one member of the Board of Directors of the State Penitentiary, one member of the Visitors of the Baltimore City Jail, one member of the Board of Managers of the Maryland House of Correction, one member of the Federation of Labor of Maryland, one member of the Faculty of Johns Hopkins University, one member of the Medical and Chirurgical Faculty of Maryland, one member of the Prisoners' Aid Association of Maryland. The Governor shall designate one of the members of the commission as chairman thereof and the commission shall elect such other officers as it may deem necessary. The governor shall fill all vacancies in the commission and shall appoint to a vacancy a representative of the body, institution or organization whose representative caused the vacancy, but if the vacancy was caused by the death or resignation of one of the two members appointed at large by the Governor then the Governor shall fill such vacancy by an appointment at large.

SEC. 2. And be it enacted, that the commission may appoint a secretary, who shall not be a member of the commission, to hold office during the pleasure of the commission, at a salary not to exceed the rate of \$2,500 per annum, and may employ such other clerks as it may deem necessary, but no member of the commission shall receive any compensation for his services, but the members and employes thereof shall be entitled to receive their reasonable expenses incurred in the performance of their official duties, and the sum of \$10,000, or so much thereof as may be necessary, is hereby appropriated from any money in the treasury, not otherwise appropriated, for the payment of the salaries of the secretary and clerks of the commission and for the expenses of the commission in carrying out the purposes of this act.

SEC. 3. And be it enacted, that said commission be and it is hereby directed to investigate the penal laws and penal system of the state and it is hereby empowered to enter and fully investigate and inquire into the management and conduct of every institution in the state of Maryland wherein any person may be held or sentenced to confinement for violation of any law of the state, and it is further empowered to examine all books and other records of any such institution, and it shall be the duty of every official and employe of every such institution to testify before and give full information to said commission relative to any matter it may inquire into.

SEC. 4. And be it enacted, that said commission is hereby empowered to summon witnesses to appear before it and to examine witnesses under oath administered by an officer of the state authorized to administer oaths.

SEC. 5. And be it enacted, that said commission is hereby directed to report the results of its investigations with such recommendations as it may approve, to the next session of the General Assembly.

SEC. 6. And be it enacted, that the invalidity of any section or of any part of this act shall not affect in any way the validity of any other sections or of any other parts of this act.

SEC. 7. And be it enacted, that this act shall take effect from the date of its passage.

JOSEPH N. ULMAN, Baltimore,
President Prisoners' Aid Association of Maryland.

AN ACT IN RELATION TO ELECTION OF PUBLIC DEFENDERS

An Act in Relation to the Election of Public Defenders in New York.

—The people of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter sixteen of the laws of nineteen hundred and nine, constituting chapter eleven of the consolidated laws, with the several amendments and supplements thereto, is hereby amended by adding a new article, to be known as article eleven A, to read as follows:

ARTICLE 11A.

SEC. 206. Election, appointment and term of office of public defenders. 1. At the general election to be held in the year nineteen hundred and twelve there shall be elected in counties having a population of one million inhabitants, or over, a public defender, who shall hold his office for four years from and including the first day of January, nineteen hundred and thirteen. Every four years thereafter there shall be held other elections for the election of successors to the public defenders chosen at the first election herein provided for, which successors shall hold office for the term of four years, from and including the first day of January next succeeding their election.

2. In the event of the death of a public defender elected as herein provided for, his resignation or vacancy occurring through other means in the office of public defender, the Governor, by and with the consent of the Senate, may appoint a public defender to fill out the unexpired term.

3. Any public defender elected or appointed under the provisions of this article may be removed by the Governor in the same manner as a district attorney.

SEC. 207. General duties and powers. 1. It shall be the duty of every public defender to defend, without charge, and to represent generally all persons who have been indicted by the grand jury of the county, who are without means to employ counsel and who desire the services of said public defender.

2. He shall have power to employ such deputies, assistants and clerks as shall be necessary for the proper conduct of his office, subject to the approval of the Board of Supervisors of the county, except where the county is wholly within the city of New York, in which case the employment of such deputies, assistants and clerks shall be subject to the approval of the Board of Estimate and Apportionment of the city of New York.

3. He shall be paid a salary of fifteen thousand dollars per annum in equal monthly installments.

SEC. 208. Employment of counsel by the public defender. 1. The public defender of any county in which an indictment has been found for a capital or other important crime, with the approval in writing of the presiding justice of the court in which the indictment is found, which approval shall be filed in the office of the county clerk, may employ counsel to assist him on the trial of such indictment, and the costs and expenses thereof, to be certified to by the judge presiding at the trial, shall be a charge upon the county.

SEC. 209. Application to counties having a population of less than one million inhabitants. The board of supervisors of any county of this state, having a population of less than one million inhabitants, but more than two hundred thousand inhabitants, may at any time after the enactment of this act, by resolution, create the office of public defender for such county, and in such event the public defender of such county shall be elected at the first general election after the adoption of such resolution and shall be governed in all other respects by

EFFECT OF PLEA OF GUILTY

the provision of this article, except as to compensation, which shall be fixed by the Board of Supervisors of such county.

SEC. 2. All of section three hundred and eight of the code of civil procedure, constituting chapter four hundred and forty-two of the laws of eighteen hundred and eighty-one, as amended, except the first sentence of such section, is hereby repealed.

SEC. 3. This act shall take effect immediately.

The above draft was introduced in the assembly of the state of New York by Mr. Blauvelt on January 10, 1912. It was referred to the Committee on Judiciary. February 6, 1912. R. H. G.

An Act Relating to the Examination of Persons Charged With a Crime in the State of Rhode Island.—It is enacted by the General Assembly as follows:

SECTION 1. No force, subterfuge, intimidation, cruelty, threats or other means, shall be used by any constable, detective, inspector, police officer or other person to extract a confession or admission of guilt from any person who has been arrested charged with a crime.

SEC. 2. Any confession or admission of guilt so obtained from any person under arrest accused of crime shall not be evidence to be used against the said person, unless used solely by the said person's consent, and the denial of the said person that any such confession or admission of guilt was given voluntarily, will be sufficient to exclude it from being used as evidence against the said person at the time of his or her trial.

SEC. 3. Any violation of the provisions of this act shall be a misdemeanor, punishable by a fine of one hundred dollars or imprisonment for one year or both.

SEC. 4. This act shall take effect upon its passage, and all acts and parts of acts inconsistent herewith are hereby repealed.

The above act was introduced by Mr. Munroe of Providence.

R. H. G.

Effect of Plea of Guilty.—The following comment appeared in the January issue of *Law Notes*: "Had the trial of the now notorious J. B. McNamara been held in New York, New Jersey or Michigan, it would not have been immediately terminated by a plea of guilty. The New York Penal Code provides that 'a conviction shall not be had upon a plea of guilty where the crime charged is or may be punishable by death.' In New Jersey the statutory provision is that if upon arraignment a person indicted for murder offers a plea of guilty such plea shall be disregarded and the plea of 'not guilty' shall be entered. In Michigan the judge is required, even in other than murder trials, to ascertain by a search of the evidence and a personal examination whether the plea was voluntarily entered. The New York statute came up for construction in *People v. Smith*, 78 Hun. 180. Smith was indicted for murder in the first degree. After a plea of not guilty and a trial thereon the jury disagreed. Subsequently he pleaded guilty to manslaughter in the second degree and was sentenced to ten years' imprisonment. On an appeal from the dismissal of a writ of habeas corpus wherein it was argued that the sentence was invalid because of the foregoing section of the Penal Code, it was held that the provision did not apply to a conviction of a crime punishable by a term of years."

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Other states have statutes regulating the admission and effect of the plea of guilty. In Texas the statute (Rev. Crim. Stat. 1911, Sec. 565) provides that the plea of guilty shall not be received unless it plainly appears that the prisoner is sane, and is not influenced by any fear or persuasion or hope of receiving a pardon. Under the Illinois statute (Rev. Stat. 1909, Ch. 38, Sec. 424) the judge must explain to the defendant the consequences of such plea, and wherever the judge has discretion in fixing the amount of punishment, he must hear witnesses regarding the aggravation and mitigation of the offense. A statute in Washington (Ballinger's Code and Stats. 1897, Sec. 6907) provides that "if the defendant plead guilty to a charge of murder, a jury shall be impaneled to hear testimony, and determine the degree of murder and the punishment therefor." The same procedure is prescribed by statute in Tennessee (Code of 1896, Sec. 7174) in cases where the punishment is imprisonment in the penitentiary, and in Alabama (Crim. Code, 1907, Sec. 7506), except in cases where the penalty is fixed by law. Under a statute (Ind. Rev. St. 1881, Sec. 1904) providing that upon conviction of murder the defendant "shall suffer death or be imprisoned in the state prison during life, the Supreme Court of Indiana decided in *Wartner v. State* (102 Ind. 51) and *Lowery v. Howard* (103 Ind. 440) that upon a plea of guilty to a charge of murder it was error for the trial judge to impose a sentence of death.

In *Commonwealth v. Battis* (1 Mass. 95), decided in 1804, the defendant pleaded guilty to an indictment for murder and an indictment for rape. According to the official report:

"The Court informed him of the consequence of his plea, and that he was under no legal or moral obligation to plead guilty; but that he had a right to deny the several charges, and put the government to the proof of them. He would not retract his pleas; whereupon the Court told him that they would allow him a reasonable time to consider of what had been said to him; and remanded him to prison. They directed the clerk not to record his pleas at present. In the afternoon of the same day the prisoner was again set to the bar, and the indictment for murder was once more read to him; he again pleaded guilty, upon which the Court examined, under oath, the sheriff, the jailer, and the justice (before whom the examination of the prisoner was had previous to his commitment), as to the sanity of the prisoner; and whether there had not been tampering with him, either by promises, persuasions, or hopes of pardon, if he would plead guilty. On a very full inquiry nothing of that kind appearing, the prisoner was again remanded, and the clerk directed to record the plea on both indictments. * * * He has since been executed."

EDWIN R. KEEDY, Chicago.

Argument in Support of the Recommendation of the Committee on Reform in Procedure of the Oklahoma Bar Association.—"The question of law reform is being considered and discussed by the bench and bar throughout the entire country. Presidents Taft and Roosevelt thought it sufficiently important to call the attention of Congress and the nation to it in their message. The American Bar Association and the bar associations of the various states have been studying and agitating the subject for years and criticizing the administration of the law so severely, its delay in the trial of cases and reversals on technicalities, until it is thought a great necessity exists for such reform, and especially in matters of procedure. The sentiment for legal reform which placed harmless error provisions in the constitutions of the states of

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Oregon and California is a protest against this condition. Likewise the recall of judges is intended as an extraordinary remedy for an extraordinary necessity. It is the duty of the bench and bar throughout the country to assist in the correction of any errors existing in our procedure.

"The writer calls the attention of the profession and the people generally to the procedural reforms suggested in this report and ventures some suggestions and observations in relation thereto. An indictment or information should be sufficient if it enables the accused to determine what the offense is and when committed, and to enable the court to render judgment thereon. This is covered by section 1 of the report. In regard to section 2, our present procedure, forbidding reference to the failure of the accused to testify in a criminal action, is a relic of the dark ages, and should not be the law in this enlightened period. The latter part of this section is of doubtful constitutionality. Sections 3 and 4 need no explanation. All who are familiar with the trial of criminal cases when the plea of insanity is relied on, will approve these reforms, unless it be the skilled lawyer who is ever zealous of the rights of the accused and too fond of the rules of the 'game' as now played, without regard to the expense of these long-drawn-out criminal actions to the taxpayers of the state. Six needs no comment. Seven is so in accord with the modern trend of law reform that no good citizen should oppose it. To permit a defendant to come into court for the purpose only of notifying the court that he has no notice of plaintiff's suit and require the expense and delay necessary to get out a new summons and have it served upon him, is not only frivolous, but ridiculous. Section 8 would prevent a great many fictitious defenses made only for delay, and save time and expense in the administration of the law.

"The profession will differ as to the reforms suggested in section 9, and the writer does not consider it so important as other provisions of the report. The recommendation in section 1 is very important to taxpayers and to those officers of the state who sincerely desire to administer the law impartially, speedily and at the least expense possible. The necessity of this reform was suggested to the writer soon after he took up the duties of a district judge after statehood. Just why the taxpayers of the county should be required to pay a sheriff to go out twenty miles into the country and notify a citizen in person that he was drawn to serve on a jury, he could not understand, when such citizen could be notified over the telephone or by letter at a nominal cost. Upon investigation it was found that law reform in this respect is one hundred and fifty years behind the times. We are using the same cumbersome machinery in the administration of the law that was in use before the United States mail system was established, or the telegraph and telephone invented.

"Often, as judge of the court, I ordered the attendance of jurors and witnesses by mail and by telephone without legal authority, but with much success. I recognize that no corporation or business concern would use the expensive machinery used by our courts, and so feeling, in February, 1910, I prepared a bill to authorize the summoning of jurors for the district and county courts and witnesses in both civic and criminal cases in person over the telephone, by telegraph or by mail, registered or ordinary, at the option of the litigant ordered the service. I called attention to the legislature by circular letter to the necessity of such a law, and also to Governor Haskell, who promptly submitted the matter by special message, and the bill became

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a law, amended however, as to not authorize a witness to be subpoenaed by telephone or telegraph. This section recommends that this law be amended to authorize such service. It should be done. Since this law was passed, as district judge, I have experimented with the procedure by ordering jurors summoned by telephone, by mail, ordinary and registered, with equal success. I have found but one juror who declined to obey the summons by mail, and I hardly think he will do so again. In my district witnesses in both criminal and civil cases are served by telephone, and they promptly obey the service."

The Admission of Proved Handwriting as Testimony.—In a communication from Hon. Marcellus L. Temple, United States Attorney for the Southern District of Iowa, a point is made which I had not before considered and that is that more lawyers are interested in limiting the powers of the prosecution than in extending them. Mr. Temple says: "You know, these matters in Congress are usually controlled by the lawyers in the delegation and lawyers are, as a rule, conservative. Too many of them are interested in the defense of that class of cases and are very slow to support any law that will give the prosecution any greater latitude than they have had heretofore. That question I have found to be a very important one, but I trust that influence will be brought to bear to procure this much-needed legislation."

It is a humiliating fact that England passed this proposed law fifty-seven years ago and that our country, which we think so progressive, has not yet been able to do it.

ALBERT S. OSBORN, New York City.

The Unreliability of Handwriting Expert Testimony.—"A miscarriage of justice caused President Taft to-day (January 19) to grant a full and unconditional pardon to Oscar Krueger of New York, who had served nearly one year of an eighteen months' sentence in the Atlanta prison for a crime he did not commit. Expert (?) handwriting testimony, it was said, was responsible for his conviction on a charge of mailing an obscene letter. An exhaustive investigation by the Department of Justice established Krueger's complete innocence."

Expert testimony in the matter of handwriting is a matter of mere "deduction" and the testimony concerning handwriting can never be accepted by the courts as an exact science. The expert merely examines specimens of the handwriting of the accused, and makes a few comparisons, and his inferences are venal, that is, he will state what the government or defense may desire. This testimony is for sale to the government or defense, and expert handwriting testimony can always be procured if the party desiring it is able to meet the terms of the expert. It is pretty near time that the courts should put a stop to depriving a citizen of his liberty upon the mere guesses of "professional witnesses for hire."

JOSEPH MATTHEW SULLIVAN, Boston.

Proof of Handwriting.—In an article under this title in the December, 1911, number of the *Illinois Law Review*, Albert S. Osborn, well known as the author of "Questioned Documents," discusses the rule of evidence which does not permit the introduction of specimens of a person's handwriting solely for the purpose of comparison with the writing in dispute. This rule has been changed in many of the states but still obtains in some. However suited this

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rule may have been to the conditions of knowledge on the subject formerly prevailing, it seems clear that it should now be changed so as to allow the introduction of sufficient material to enable a proper comparison of disputed writings to be made. Mr. Osborn points out that the great value of the introduction of standards of comparison lies in the fact that thus the very thing in dispute is actually before the court and jury in tangible form. The proof thus does not rest merely on the opinion of an expert, but he is able to give his reasons and to demonstrate them from the things themselves and the jury can thus judge of the value of the opinion and may themselves make the comparison. It would seem clear that this affords more satisfactory proof than the mere opinion of persons judging of the writings from memory of the general characteristics of a person's handwriting or of experts. The article is a valuable discussion of the subject. E. L.

The Oregon Constitution, Art. 7, Sec. 3, as Amended November 8, 1910.

—In actions at law where the value in controversy shall exceed \$20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is no evidence to support the verdict. Until otherwise provided by law, upon appeal of any case to the Supreme Court, either party may have attached to the bill of exceptions the whole testimony, the instructions of the court to the jury, and any other matter material to the decision of the appeal. If the Supreme Court shall be of opinion, after consideration of all the matters thus submitted, that the judgment of the court appealed from was such as should have been rendered in the case, such judgment shall be affirmed, notwithstanding any error committed during the trial; or if, in any respect, the judgment appealed from should be changed, and the Supreme Court shall be of opinion that it can determine what judgment should have been entered in the court below, it shall direct such judgment to be entered in the same manner and with like effect as decrees are now entered in equity cases on appeal to the Supreme Court; provided, that nothing in this section shall be construed to authorize the Supreme Court to find the defendant in a criminal case guilty of an offense for which a greater penalty is provided than that of which the accused was convicted in the lower court."

See 115 Pacific Reporter, p. 418. *Wills v. George Palmer Lumber Co.*

GEORGE B. WINSTON, Judge, District Court, Anaconda, Mont.

Report of the Commission on the Inferior Courts of the County of Suffolk, Massachusetts.—The commission appointed to investigate the inferior courts of Suffolk County, Massachusetts, and to consider the expediency of revising the judicial system of the county, reports in part as follows:

"The prevalent complaint against the law's delays can have no application to the inferior courts of Suffolk County. They are all fully abreast of their work in point of time. Civil causes can be tried upon the issues within a month of the date of the writ. Criminal cases are in the large majority of cases finally disposed of on the return day of the summons, or the day following arrest. Requests for continuance generally come from the defendant, and usually involve only a few days.

"The element of delay touches the work of these courts only in its relation to the appeal system, which is dealt with later herein.

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"We find that although these courts, except for juvenile jurisdiction, exercise within their several districts the same criminal jurisdiction, and the same civil jurisdiction except as to variation in amount in the central court, and although the social and economic conditions of their various districts do not differ essentially, there exists a radical and multiform variation and antagonism of practice in matters essential to the enforcement of law. In our opinion this is a matter of grave moment, for no body of law can serve its full purpose, no penal law can command the full measure of that public respect failing which the law itself fails, when the execution of such laws needlessly and unreasonably varies within a given community. We are well aware that absolute uniformity of legal enforcement is not humanly possible, but that furnishes no argument for the inviolability or retention of a system which of itself tends to promote such contradictions; for the fault is in the system,—not in the various judges and other officials, but in the segregating system, which not only permits but promotes such variations by depriving each of them of efficient points of contact with the others. Some of those variations are as follows:

"In two of these courts the provisions of Revised Laws, chapter 212, section 37, permitting the release by probation officers of certain persons arrested for drunkenness, is almost a dead letter.

"There is a wide variation in the length of probation terms, ranging from three months to two years; eight courts continue cases on probation to a day certain, while the ninth continues such cases *nisi* or indefinitely, notwithstanding a serious doubt as to the validity of sentences imposed upon subsequent surrender.

"In one court sentences for drunkenness are largely predetermined by the court, upon inspection of the probation officer's report of previous convictions, right or wrong, and this in the absence of the prisoner.

"The provisions of St. 1902, chapter 227, permitting release of certain convicts on parole by consent of the judge and probation officer of the committing court, are unequally applied.

"In certain courts a policy prevails of fining in practically all cases of persons arrested for drunkenness who are not residents of the particular judicial district.

"There is a marked variation in the policy of fining or imprisoning in certain classes of offenses.

"There is a similar variation in the application of laws designed to alleviate the unequal effect of imprisonment for nonpayment of fine, *e. g.*, suspension of sentence, etc. (Acts of 1905, chapter 338).

"A decided variation exists in the use of the probation system, not only as a whole, but in its relation to specific classes of cases.

"The diversities of civil practice are not so important, more especially as 92 per cent of all the civil cases are entered in the central court, but it is worthy of note that these courts are working under several different sets of rules, which certainly does not make for the convenience of the bar or of litigants.

"In endeavoring to frame a remedy for these conditions we have tried to keep constantly in mind these three objects: first, the adoption of what public sentiment seems to demand; second, no, avoidable interference with existing conditions; and third, local remedies for what is essentially a local problem.

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"The overwhelming sentiment of the community, as expressed in the hearings before us, and one in which we unanimously concur, is that the time has come to consolidate these courts.

"In devising a plan for consolidation, the attention of the commission has turned naturally to the Municipal Court of Chicago. While the Municipal Court idea is an old one in Boston, the Chicago court was created with a distinct legislative recognition that there is a business as well as a judicial aspect to court work. The act creating the Chicago court adopts the business corporation idea, lodging the general control in the judges, with wide powers analogous to those of a board of directors, and a chief executive officer, with substantial powers of supervision and direction, acting through various responsible department heads. The court has final jurisdiction of fact, with a speedy means of determination of legal questions by higher tribunals.

"The work of the court in the five years of its existence has fully justified its creation. It has obviated the abuses incident to the old system of segregated courts, has kept abreast of its work and materially relieved the pressure and delay in other tribunals, has developed celerity and efficiency, and eliminated waste. Legislative correction and amendment have come from the inside by recommendation of the judges. This shows a more healthful condition than legislative restriction born of outside grievance.

"With it as a model have been created similar courts in Cleveland, Buffalo and Milwaukee, and its administrative features have been legislatively adopted for the New York court of special sessions.¹ Its system has been agitated with expectation of success in Pittsburgh, St. Louis and San Francisco. We believe that many of its features can be made useful here, especially its plans of solidarity and of efficiency through centralization in administrative matters, and have incorporated them in the recommendations for legislation. . . .

"Summary of recommendations made, and for which provision is made in the legislation proposed:

1. "A consolidation of the inferior courts of the county, by the extension of the central court, the abolition of the remaining courts, the creation of a juvenile division having jurisdiction throughout the county, and an appellate division for error of law in civil causes; the court to consist of one chief justice, fifteen associate justices, ten special justices and one associate and two special justices for juvenile work.

2. "Larger and more specific authority in the court, by majority vote of its judges, to make rules and orders for the transaction of its business and regulation of its practice.

3. "Centralization of executive authority, to secure efficiency and uniformity in the transaction of its business, and to promote co-ordination in the work of its departments.

4. "The adoption of a system to prevent duplication of trials on issues of fact, in civil causes.

5. "Permissive authority for the court to appoint salaried interpreters."

The report is signed by WILFRED BOLSTER, JOHN F. BROWN, JOSEPH C. PELLETIER, A. NATHAN WILLIAMS and DANIEL T. O'CONNELL.

¹Laws of New York, 1910; fourth Chicago report, p. 49; final report, Page Commission, New York, p. 24.

GERMANY, AUSTRIA, AND SWITZERLAND ON PROSTITUTION

The Conservative Point of View on Procedural Reform.—Dean Brooks, of the College of Law in Syracuse University, makes it quite plain in his article appearing in the *Yale Law Journal* for February, 1912, that he is a patriot. The characteristically efficient and expeditious methods of British criminal tribunals, he does not hesitate to term "judicial lynching." Whereas our methods "have been formulated by a great liberty-loving, free people, and make paramount the life, liberty and happiness of the citizen," and in them the Dean has "great faith."

The following extract is reasonably typical of his point of view:

"Holding up as an example to be emulated, some European government does not appeal to me. I believe in the thoroughly Christian humanity of our own laws, and legal system, and I am not ready to approve any law of procedure that has in view the quickest legal immolation in prison or the taking the life of a citizen charged with crime."

The Dean apparently concedes that we, in America, have a "slouchy manner" of enforcing criminal procedure. Yet he patriotically insists that the more speedy criminal justice meted out in England is what "our fathers planned wisely and well to avoid and prevent."

The Dean's suggestion for relief is to "live up to the spirit of our law." That is our suggestion as well. In our judgment, however, the very genius of the common law is embodied in the sane and sensible criminal jurisprudence and administration of Great Britain and the British dependencies. Their example, at least in that respect, we must insist as "holding up to be emulated," even at the risk of being deemed unpatriotic by some patriots.

There are few crumbs of comfort to be gleaned from Dean Brooks' article by a public suffering from the technicalities and the delays of the criminal law and its administration on this side of the Atlantic. Perhaps the chiefest of these is the reluctant concession that there is now abroad in the land a spirit which does not hesitate to criticize, in the first place, and to study the solution of the problem abroad, in the second place.

I. MAURICE WORMSER, University of Illinois.

The Legal Attitude of Germany, Austria and Switzerland on the Subject of Prostitution.—(Paul Balmer, *Schweizerische Zeitsch. für Strafr.*, 24th year, No. 2.)

The writer comments on the general similarity of the codes which is unintentional and probably the result of evolutionary processes common to German-speaking peoples. Hope is expressed that beneficial legislation may result from the attention being given to the subject by great thinkers. The present laws were not secured without conflict, and progress will not be made without many more battles.

The article covers the following phases of the subject: Prostitution and its manifestations; and prostitution as a trade and its regulation by the state.

Prostitution in itself is looked upon as not punishable; not because it cannot be punished but because of its personal nature. The law is concerned principally with those phases which challenge social attention. The scandal proposition is not looked upon as a large one because it is local in nature. There is a tendency to ignore neighborhood complaints for the novel reason that "the prostitute must live somewhere." The idea of making the communication of venereal disease a crime seems to be a new one in Germany. The code which

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makes it a crime to mishandle or inflict bodily injury of any sort is not looked upon as covering the case. The laws guaranteeing personal freedom and against the maltreatment of minors are looked to for protection against traffic in young girls.

Switzerland punishes with imprisonment the knowing impartation of venereal disease by a prostitute or an infected man.

The general attitude of regulation brings difficulties because regulation implies public consent and involves the government in the problem of "morals police." The attitude of American communities has been to refuse to make any recognition of the traffic. The Austrian plan of recognition amounts practically to unlimited freedom for prostitution with efforts to restrict harmful contagion as far as possible.

Gainful prostitution is forbidden by law in Switzerland. This law makes houses of prostitution impossible. In Germany, gainful prostitution is punished only when health is endangered. Traffic in young girls is looked upon as an international menace. Transportation is punished by two years' imprisonment in Switzerland; in Austria, with from four weeks to three years' imprisonment. The German plan calls for imprisonment from three months to five years.

Practically the same situation confronts reformers in Europe as in America. Legal ostracism of prostitution is not a complete victory. The issue depends upon social morality everywhere.

PHILIP A. PARSONS, Syracuse University.

Compensation by the Criminal for Injury Inflicted.—(Prof. Dr. Earnst Hafter, Zurich, in *Schweizerische Zeitsch. für Strafr.*, 24th year, No. 4.)

The growing tendency to recognize the rights of the injured person to compensation has registered itself in laws in several European countries. Professor Hafter discusses and criticizes such legislation and the principles involved.

The question of releasing the culprit without further punishment upon the payment of compensation to the injured party turns on the effect of such an action on the public safety. Quite frequently justice is only partly obtained when the injured party has been compensated. Social protection may demand the restraint of the offender from repeating the damaging action. The principle of awarding half the fine to the injured party is a return to primitive German custom as well as Roman. Where property is confiscated for payment of fines the right of the injured should still be recognized.

In case of labor, either in confinement or at liberty, a stated portion of the proceeds of the labor should go to the injured. The principal difficulty arising from such an arrangement lies in the fact that the returns from the labor of many criminals little more than pays the state for the cost of their support. Consequently the amount available for the injured party would frequently be insignificant. For an extended discussion of this whole subject, see my own "Responsibility for Crime," Chapter IX, on Justice and Restitution.

PHILIP A. PARSONS.

Usury Laws.—The Appellate Division of the Supreme Court in the Second Department, New York, has taken a position construing the usury laws of the state of New York as applied to a device by a loan concern for evading the operation of those laws. The case was *Myrtle M. Thompson v. the Erie R. R. Co.* An employe of the company applied to the Chester Kirk Company of New York for a loan of \$37.00 and received a blank to be signed by him,

FREE LEGAL AID BUREAUS

which turned out to be a power of attorney in which he constituted one Stella Blanding his attorney, to make notes, assignments of wages and any other instrument to repay the loan. This power to be exercised in the state of Maine. When the note was not paid at maturity, the attorney made an assignment of the employe's wages due from the Erie Railroad Company in the sum of \$90.00. A copy of the assignment was sent to the railroad company, with a statement that if \$60.50 were paid under it before the claim was put in the hands of an attorney the assignment would be withdrawn. Suit was then brought against the railroad company to collect the \$60.50. The Appellate Division of the First Department held the assignment void and dismissed the suit on the ground that the law required that notice be served on the employer within three days after the borrower made his note and assigned his wages, and not within three days after the assigned wages were collectable.

R. H. G.

A Grave Defect.—The following is from *Case and Comment* for January, 1912: "In the new English Court of Criminal Appeal the first capital case was recently passed upon, says the New York *Evening Post*, and it revealed a serious defect in the law creating the court, novel in British judicial procedure. A convicted murderer appealed on the ground that the jury in the court below had been improperly directed as to certain corroborative evidence. The judges on appeal found the plea to be well taken. Without asserting the innocence of the accused man—indeed, it is evident that they believe him guilty—the judges declare that they cannot be certain that the jury would have convicted him if it had not been misinformed as to the nature of part of the evidence against him. Hence the verdict was quashed; but now comes the surprising thing—the Court of Criminal Appeal is not able, under the law, to order a new trial! Over this lack of power Justice Darling expressed sincere regret, saying that the court felt that the case was one in which it was eminently desirable that 'all the facts should again be submitted to a jury with an adequate and proper direction.' Unhappily, the statute did not confer authority to order a new trial in criminal cases, though it did in civil. Justice Darling significantly added that he hoped that what the court said on this point would be 'considered by those who had power to amend the law in this respect.' One would think so! The right of criminal appeal was established in England as a safeguard against possible injustice to the innocent; it could never have been intended to permit a man charged with atrocious crime to escape by means of a loophole in the law. To close it will certainly be the immediate duty of Parliament."

R. H. G.

Free Legal Aid Bureaus.—The following is from *Case and Comment* for January, 1912:

"The value of the free legal aid bureau," says the Kansas City *Journal*, "has been demonstrated on many occasions, but rarely more conspicuously than when it took up the cause of a number of waitresses whose valid claim against a defunct concern would in all probability have been overlooked had they not been represented by counsel. In the nature of things, working girls, whose claims averaged only a few dollars each, could not employ attorneys to look out for their small interests, but the very fact that they were working girls made even the most modest of claims matters of importance to them.

"The moral effect upon the unscrupulous of the knowledge that there

APPEAL FIVE YEARS AFTER ORIGINAL TRIAL

stands between them and those needing protection an organization of such potency is probably the most telling influence exerted by the bureau, as has been proved on numerous occasions when the mere demand for redress of wrongs has been met with alacrity.

"In commenting on this line of work, the *St. Louis Republic* observes: 'Our philanthropic lawyers are going to provide free, or nearly free, litigations for the poor. That is, they will take poor people's cases for nothing or next to nothing.

"We should condemn this philanthropic enterprise if its object were to encourage pauperism. But this is not the case. The guiding object is 'to help people to help themselves,' and the litigants will be allowed to pay whatever they can, be it ever so little. So that we commend it cordially, and the more so since a special purpose will be to attack loan sharks that wring usury out of the poor.

"In such excellent work every member of the bar might well bear a part. But it appears that the older members have left it all for the young ones. Every name in the list of those actively interested is that of a young man. Are only young lawyers philanthropic? Do they become colder and less unselfish as years wear on? Have old lawyers no time for poor clients and no sympathies?"

"There has never been a time in the history of the American bar when many of its members in their private practice did not unostentatiously and freely give their professional skill to deserving persons who were unable to recompense them. The establishment of free legal aid bureaus but emphasizes a trait of the legal profession which has never been adequately recognized or appreciated and the extent of which has never been half revealed. The public has been inclined to point out the shortcomings of the lawyers rather than their virtues. Too much, however, cannot fairly be demanded of the legal profession in the way of charitable and unrequited service. The law is the lawyer's business and his means of livelihood. He has fitted himself for it by years of arduous preparation and ought not, any more than any other business man, to be expected to give the public too freely of his stock in trade."

R. H. G.

Appeal in Criminal Case Five Years After Original Trial.—The following is from the *New Jersey Law Journal* for December, 1911: "In 1906 a lawyer in Long Island was convicted of forgery in the first degree and sentenced to serve not more than five years in prison. Fully five years later, when, if guilty, he should have served his term and been released, his appeal was decided in the Appellate Division of the Supreme Court confirming his conviction. In the meantime the defendant was free and under bonds to await the decision of the appeal. The appeal is said to have been based wholly on technicalities. This is one of the things which tend to nullify all the good arising from criminal laws supposed to be wise and of criminal procedure supposed to be prompt. We cannot conceive of any good excuse for the postponement of the hearing and decision of an appeal in a criminal case to five years after the original trial. If the event had happened in New Jersey it would have been widely noticed as a most unseemly departure from Jersey customs and practice, but somehow or other, it having occurred in the state of New York, we have not observed any press comment upon it. There is

REFORMS PROJECTED BY CHICAGO BAR ASSOCIATION

no question but that punishment for crime must be sure and swift, or the influence of good criminal laws is lost upon the community wherein there is such tardy enforcement. In striking contrast to the case noted above is the speedy conviction and sentence to death of five Italians charged with the murder of a woman in Westchester County, New York. The murder was committed on November 9, and twenty days later the defendants had all been arrested, tried and convicted, and two or three days later sentenced to death. Should there be an appeal in this latter case, we suspect it will be decided within a brief time as compared with the decision in the case of the lawyer. Can there be any suspicion on the part of anyone that it may sometimes happen that a foreigner or an ignorant citizen without friends might receive different treatment at the hands of some courts as to the speediness of the administration of justice from a wealthy man, or a man who has been somewhat distinguished in professional or other lines! We do not say that this is so, but there are a great many trials and appeals from trials in this country which furnish the foundation for just such a conclusion on the part of the public, and it is a matter to be deeply regretted by all friends of good order. The civilization of America is being tested in many ways as it never has been before, and one of these ways is in the line of quick or slow, fair or unfair, prejudiced or unprejudiced criminal procedure. Happily, New Jersey is a conspicuous instance of where objections to our criminal processes have not come to the front. There has been no occasion for them, and we hope there never may be."

R. H. G.

Expedition of Justice in New Jersey.—The *New Jersey Law Journal* for December, 1911, says that the New Jersey State Bar Association "has again taken the initiative, in an effort to provide some method by which the administration of justice in this state may be improved and expedited. It has appointed a committee to investigate and report upon this subject, which committee consists of former Justice Van Syckel, former Governor Fort, Supreme Court Justices Swayze and Bergen, Vice-Chancellors Walker and Howell, Judges Skinner and Gaskill, Senator Silzer, former Justice Gilbert Collins, William N. Clevenger and Frank H. Sommer.

"Two things are certain: First, that this committee is eminently capable of devising a plan of judicial procedure. Second, that the present dual plan in operation in this state ought to be improved, simplified and brought down to present needs and conditions.

"Nothing can be done in the way of voting on a constitutional amendment until 1914, and by that time the able committee may have devised a plan which the legislatures of 1913 and 1914 will approve and which the people will consider on its own merits."

R. H. G.

Reforms Projected by the Chicago Bar Association.—There is an extensive investigation being conducted by committees of the Chicago Bar Association with a view to bringing to light those members of the bar who are guilty of unprofessional conduct in the practice of their profession. It is the hope of these committees that blackmailing collection agencies and "ambulance chasers" may be done away with. There is, furthermore, a contemplated investigation of the judges of Cook County with the purpose of ascertaining whether it is possible to do away with country judges. This investi-

STAMPEDING THE JURY

gation goes on with the idea that it is unwise to bring the country judge into the city, because he is not familiar with the situations in Chicago.

In the radical reform which is receiving the attention of the association is the changing of the method of selecting judges. One of the reforms in this regard suggested is the appointment of twelve non-partisan citizens to act as selectors of the judges, four to serve for two years after appointment, four to serve four years and four to serve six years. On reappointment each man to serve for four years. This body will submit a list of twice the number of judges to be appointed to the governor, who will appoint the judges from the list. This plan, it is hoped, will eliminate politics from the choice of our judges.

R. H. G.

"Stampeding the Jury."—In the Chicago Tribune of December 1, 1911, is an editorial under the above title, in which comment is made upon the Patterson murder trial in Denver, in which to no purpose, as the sequel proves, much time and infinite pains were employed in an attempt to find a satisfactory jury. The writer of the editorial, in his comment, points out our inconsistency in placing such safeguards around the selection of the jury and nevertheless permitting corruption from outside sources to run rampant. He says:

"The purpose of a criminal trial is presumed to be the ascertainment of the fact of guilt or innocence under the law. Yet the very widest latitude is permitted in argument, so that, after the most cautious and minute process of preventing prejudice in the selection of jurors and the most drastic process of presenting testimony in order to prevent irrelevant facts and considerations to enter the minds of the jury, all this elaborately safeguarded structure is thrust into a whirling phantasmagoria of rhetoric, melodramatic, histrionic appeals to passion, prejudice, and overwrought sentiment. Counsel are permitted personal recriminations, innuendoes, and sneers which involve themselves, their characters, and their methods in the main question of the defendant's guilt, and out of this roaring storm the jury is expected to stand firm, cool, unbiased, to hold with a steady hand the delicate scales of justice! All the disinterested assistance they receive is in the form of certain so-called 'instructions,' which are statements in law English, involved and technical, of the legal principles they must obey. These are contrived not by the court but by the battling attorneys, chiefly the attorney for the defense, whose object is not so much to enlighten the jury as to trick the judge into a technical error from which, under our technical system, reversal may be hoped.

It is high evidence of the innate good sense and right feeling of the average man serving on juries that justice is served as well as it is. But a system so plainly defective is sure to produce much preventable evil, and ought to be amended in the light of reason.

Among lawyers and judges who have considered remedies for the defects of our legal procedure the strongly preponderant opinion favors strengthening and enlarging the function of the judge. At present the forensic *mélée* of the attorneys goes on unchecked to almost any excess because the judge's hands are tied. Procedural reformers say he should be allowed more freely to control debate and should be privileged to comment, as the English judges do, upon the evidence.

There ought to be public spirit enough in the legal profession to correct the

HARMONIZING STATE LAWS

most glaring faults of our peculiar American system. But the legal profession is proverbially 'conservative,' and its progress is very slow." R. H. G.

"The Law's Delay."—The committee on Judicial Procedure of the Law Association of Philadelphia has had under consideration for some time the subject of delay in the trial cases in the county court with a view to suggesting limitation and has prepared a report in which a comparison is made of the time required for reaching a case in Philadelphia with that in several other cities. In Philadelphia the time varies from one to three years, but after a case has been ordered on the list another year passes before it comes to trial. In New York the time required is from one and one-half to two years in ordinary cases, three to six months in cases preferred by law; in Brooklyn one and one-half to two years; in Chicago three months in the Municipal Court and one year in the county courts; in St. Louis from three to six months; in Boston from six months to two years; in Baltimore from four to eight months; in Cleveland and Buffalo, one year; in San Francisco, thirty days; in New Orleans, two to five months. The committee favors an increase in the number of judges of the Common Pleas Courts. The report goes on to say:

"Jury trials are held in New York during thirty-six weeks of the year, in Brooklyn during thirty-nine weeks, in Chicago during forty weeks, in St. Louis during twenty-five weeks, in Boston twenty-six weeks, in Baltimore thirty-seven, in Cleveland thirty-six, in Cincinnati thirty weeks, in Buffalo thirty-two weeks, in San Francisco every week, and in Philadelphia twenty-one weeks. This figure in Philadelphia is based upon the practice until recently. Several of the courts have added some weeks this winter to their jury periods, though we understand it is not yet decided that the addition shall be permanent.

"It seems," says the committee, "that the number of hours of jury trials ought to be increased either by adding to the number of judges or adding to the number of weeks of jury trials in each year, or by lengthening the court day or by some combination of the foregoing."

The committee will present a resolution for the consideration of the association to the effect that the judges be requested to sit till 3:30 o'clock each day, with a half-hour recess for lunch. R. H. G.

Harmonizing State Laws.—A number of prominent lawyers in New York City are organizing an "American Academy of Jurisprudence" for the purpose of taking action toward the harmonization of the legal systems of the several states. It is understood that the leading idea of the organization is to compile and publish a monumental work which may hope in time to acquire legally quotable authority as a national or interstate code. Its value to American civilization will depend upon the common sense of the men who do the work. It is to be hoped that the organization will mobilize the law and set it free from mere words and forms; that it will place the emphasis upon living principles rather than upon dead precedents.

A fund of \$100,000 is to be raised to carry on the work of the academy. Among those who are mentioned as actively interested in the plan are Joseph H. Choate, Senator Elihu Root, Former Judge John M. Dillon, ex-president of the American Bar Association; Alton B. Parker, Thomas G. Jones, former governor of Alabama; James DeWitt Andrews, Former Judge Peter S. Grosscup of Chicago, Eugene Prussing of New York and L. H. Alexander of Philadelphia. R. H. G.

MUNICIPAL COURT OF CHICAGO

Proof of Handwriting in Judicial Proceedings.—The following quotation from the report of the Attorney-General of the United States is self-explanatory:

"I recommend the enactment of a law making a uniform rule for the federal courts throughout the country respecting the admission of evidence to prove disputed handwriting. Briefly stated, the general common-law rule which prevails in some of the states is to the effect that in a case involving disputed handwriting, no genuine specimen of the handwriting of the accused person not already in the record, or that is not otherwise relevant, can be introduced as a basis for comparison. (*Withaup v. United States*, 127 Fed. 530.)

"In a recent letter on this subject the United States attorney for the Southern District of Iowa says:

"In many cases arising under the criminal laws of the United States the case hinges upon the question of handwriting, and a large number of such cases are found in enforcing the laws relating to the postoffice and postal service. The conviction of offenders in such cases is well nigh impossible, especially if the defendant is a criminal of experience in courts and court proceedings. As a rule they refuse to put their names to any paper connected with the record and refuse to make any written statement in connection with any matter connected with the case.'

"During the first session of the Sixtieth Congress, there was introduced in the House, by the chairman of the Judiciary Committee, the following bill (H. R. 12676) relating to proof of signatures and handwriting:

"Be it enacted, etc., That in any proceeding before a court or officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses or by the jury, court or officer conducting such proceeding to prove or disprove such genuineness.'

"This bill had the approval of my predecessor, and I earnestly urge that this or some similar measure be enacted into law.

"GEORGE W. WICKERSHAM, Attorney-General."

(From the Annual Report of the Attorney-General of the United States for the year 1911, p. 88.)

A. S. OSBORN.

Judge Kavanagh on the Causes of Crime.—In a warning sounded by Judge Marcus A. Kavanagh at a banquet given on December 6, 1911, in Chicago, in honor of Judge John P. McGoorty, Judge Kavanagh said "The law is so charged and clogged with harmful legislation and technicalities that justice is defeated. I want to call attention to concrete facts. A German's horse and cart were stolen and the case was fined \$1. A pawnbroker armed two burglars and set them to work. They broke into forty homes and were caught red-handed, but an 'inadvertance' in the judgment set them free by a ruling of the Supreme Court. There is a whole lot the matter with the administration of our criminal law, and the people are awakening and are looking to us judges and members of the bar to do something."

R. H. G.

Municipal Court of Chicago.—The annual report of Chief Justice Harry Olson of the Municipal Court of Chicago gives the following interesting items as to the volume of business done in this court:

There were filed during the year 53,223 civil cases; 50,931 were disposed

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of, leaving 2,292. The money judgments amounted to \$4,096,254.58, an amount equal to that entered by the High Court of Justice in the City of London, England, for a like period. There were filed during the year criminal, quasi-criminal and preliminary hearings in felony cases, a total of 93,832; 92,730 were disposed of, leaving a balance of 1,102. Jurors' fees paid to jurors in civil cases amounted to \$93,284.15 and in criminal cases \$17,657.55, making a total of \$110,941.70. During the last year there were 2,418 more cases filed than disposed of. There were 4,955 more cases filed than during the previous year and 2,282 more cases disposed of. The total receipts of the court for the year were \$781,000. The net earnings returned to the taxpayers amount to \$568,000. The total expense of the court for the year was \$768,000. The report shows there were 93,832 new criminal suits filed during the year, divided as follows: Quasi, 72,189; preliminary, 9,361; criminal, 12,012. Of these cases 92,730 were disposed of as follows: Quasi, 71,434; preliminary, 9,526; criminal, 11,770.

R. H. G.

Dr. Ullman on the Crippen Case.— In *Oesterreichische Zeitschrift für Strafrecht*, Vol. II, 4 u. 5 Heft., 382 ff, Dr. Julius Ullman discusses the Crippen case. The writer remarks that in the same way that the Thaw case, some years ago, threw light upon the peculiarities of American criminal procedure, the continent is indebted to the publicity given the Crippen case for some knowledge of the essential characteristics of English criminal procedure in the gradually altered form given to it by Reform Statutes and practice. He remarks that the formality cult (which is still in vigor in America and unduly lengthens the procedure) has practically disappeared in England. The endless preliminaries in the selection and examination of talesmen, challenges, etc., leading to trickery, have disappeared. The indirect proof of the *corpus delicti* would have been difficult, if not impossible, in America. The speed with which the whole process was conducted is the subject of wonder and admiration. The tendency in Great Britain and in the proposals of Bar Associations in America to make the "merits," rather than the "formalities," count is noted.

The contempt proceedings growing out of newspaper comment on the trial are understood and intelligently reviewed. Dr. Ullman says: "The more strictly the contempt rules repress public criticism during the pendency of the trial, the more freely will this criticism be exercised after the trial in the land of the liberty of the press." The proposition stated by J. Darling that "trial by newspaper is not to be substituted for trial by jury" is so essentially bound up with the jury system that no legislation introducing that system can disregard it. The frequent separate investigations by political newspapers in Europe would no longer be immune. Ullman says, "Objectivity of courtroom reports before the final verdict of the law is indispensable to impartial findings by lay judges (jurors)."

J. I. KELLY, Chicago.

PENOLOGY.

"My Life in Prison."—Under the above title the *Bulletin* of San Francisco is publishing a series of chapters under the authorship of Donald Lowrie. It is a fascinating story of the crime, capture and conviction of the author;

CRUELTY IN GEORGIA PRISONS

what he saw, learned and felt in the penitentiary at San Quentin. The articles are exceptionally well written and they inspire the feeling that they truly represent the author's experiences. It is the case of a man who was down and out, with only a punched nickel in his pocket and without work, and who, furthermore, was repeatedly refused employment. While on his way to the river to drown himself it suddenly occurred to him to toss his damaged nickel to determine whether he should put an end to his life or take the desperate chance of obtaining relief through robbery. Robbery came up in the toss, and here began the career of one who, up to this moment, had lived an upright life. Mr. Lowrie wishes to have it distinctly understood that in writing this series he does not extenuate his violations of the law. He has twice been committed to San Quentin. The simplicity and the sincerity of the series should help people who are not wearing the stripes to a clearer understanding of the prisoner's side of life.

W. I. DAY, San Francisco.

Cruelty to Women and Children in Georgia Prisons.—The following is from *The Reflector* for December:

"A witness called by the city of Atlanta, in the investigation into the charges made by the *Georgian* in reference to cruelty and mismanagement at the city stockades, a graduate physician, in fact, testified to and described the most horrible details of inhuman barbarism that the people of this community have, or ever will have, to listen to. He told of a little 13-year-old negro girl being placed in the whipping chair invented by Superintendent Vining. She was brought downstairs with only two thin undergarments on and placed in the chair. The front was fastened and it was turned over on its face. A white man then whipped her with a strap, about which the *Georgian* has told, until when she was released from the chair she was hysterical. She said something in this hysterical condition, she knew not what, and the superintendent ordered her placed back in the chair and again whipped. While being beaten she slipped her arms down through the box alongside her body, being so small that she did not fill the box of heavy plank which tightly incases the body of an adult prisoner. She placed her hands over the parts of her body that were being beaten, trying to take some of the blows on her hands. They were soon bleeding from the blows, and the doctor testified that as she went away to work that morning the blood showed through her clothing where the cuts had been made with the whipping strap. What will the citizens of a city like Atlanta, of a state like Georgia, do to bring justice to men who are so free from human instincts as to administer such cruelty, such disgrace, such shame? Are we men or are we brutes and animals? *Georgian* is making this fight for humanity, in the name of civilization, cursed by the men who are responsible for these atrocities. Even the attorney defending these men, in his very opening words, ridiculed what we are doing and stated to the committee that a mountain was being made out of a mole hill. What do you say now, Mr. Attorney? WOMAN GETS 110 LASHES IN GEORGIA PRISON CAMP. A dispatch from Atlanta, Ga., dated September 14, 1910, gives the following: Anne Clare, a young white woman, is in a critical condition today as the result of 110 lashes administered to her at Fulton County Woman Convict's Camp by order of Superintendent Fanning, and the greatest indignation prevails here. Woman's clubs and a number of civic organizations of Atlanta are preparing vigorously to prosecute Fanning, who today was

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summoned before the prison commission. Fanning admits he administered 110 lashes with a heavy strap, because, he says, that was the only way he could silence the woman. Later accounts show that Fanning was let off with a reprimand from the commission. In the *Atlantic Georgian* of December 30, 1909, the editor, Mr. Seely, who was one of the stockade inspectors, tells of a white woman at the stockade being suspended from the rings until she fainted. The witness stated that the woman came to consciousness by having water thrown in her face. Witness also said that on the same day he had chained up another white woman. Mr. Seely considered that punishment cruel, inhuman and barbarous; that the pain resulted from stretching of the muscles of the arms when suspended above the head. 'As to filth,' said Mr. Seely, 'I do not believe there is a prison in the world that can compare to the city stockade.' Four men were found in the stockade whose legs had great sores on them. One man told Mr. Seely he had been there forty-four days and had not taken his clothes off in that time. It was impossible to do so on account of the shackles."

R. H. G.

Convict Labor.—According to a clipping from the New York City *Daily People* of December 26, a stamp of indignation has been aroused at Hartford, Conn., on account of the speeding up of convicts in the state of Connecticut. According to this clipping, contracting corporations have forced prison officials to resort to physical punishment in order to get the maximum output. A prominent social worker said:

"The physical punishment of the convict by the contractor who has leased him for industrial purposes is a disgrace to the community which tolerates its continuance, yet the citizens of Connecticut stand meekly by and let a political boss remark: 'Well, what in hell are you going to do about it?' The contract system is discredited universally, but in no other state in the Union has it sunk to as low an ebb as in Connecticut. Were it an advantage to the citizens of the state as a whole, or to the taxpayers, there might be justification in the eyes of some, but even here it falls short.

"The New Haven jail seeks to get work out of its convicts, not by giving them the incentive of a wage, but by physical punishment. At the state prison at Wethersfield the men work on shirts and shoes; few are trained to earn their livelihood when released. The institution yields immense profits to the giant corporation, the Reliance Manufacturing Company, the well-known Prison Labor Trust. Since the installation of the contract system, the institution has never got back to its original basis of educational work for the prisoner and self-support for itself."

R. H. G.

Work for Texas Convicts.—The following appeared in the Chicago *Record-Herald* of January 11:

"Two thousand convicts are to be turned loose in Texas under an honor plan worked out by Governor Colquitt. Five hundred will be given their freedom at once, and if the plan proves a success 1,500 more prisoners will be released. The men will be hired to the counties for 50 cents a day each and will be allowed to work as free laborers and without guards or manacles. Extreme penalties are provided for any convict who violates the trust, and he will have to serve the balance of his term and an extension of time if he leaves the state or commits any crime while on parole.

PRISON NEEDS IN NEW YORK

"It is proposed that one-half of the convict's wages be paid to his family and the other half to the state penitentiary fund.

"There is a demand for several thousand laborers for work on the roads and bridges, for which the different counties cannot afford to pay the cost of free labor.

"The governor says few convicts will abuse the privilege and escape. The punishment for anyone violating the trust has been prescribed by a vote of the convicts, which the governor and prison board have approved." R. H. G.

The Penal Reform League.—The fourth annual meeting of the Penal Reform League was held in London on December 8, 1911. In his introductory address the chairman said that the Criminal Court of Appeal had surpassed the expectation of its authors in respect to the good work accomplished. Mis-carriages of justice had been prevented.* Throughout the country had been a general improvement in the ordinary mode of trying criminals. The charges to juries were more careful and precise than before and sentences were better considered. Several resolutions were adopted at this annual meeting, as follows:

First: "That provision should be made in connection with the criminal courts for the careful examination by skilled experts of accused or convicted persons, and that those found to be mentally defective or abnormal should not be imprisoned, but should be suitably cared for in institutions provided for the purpose for as long as is advisable in their own interest and in that of the public."

Second: "That the conditions of service of prison officers require radical alteration with a view to their being treated with proper consideration and confidence."

Third: "That this meeting welcomes the project for starting a juvenile community on the lines of the George Junior Republic, New York, and pledges its support."

Fourth: Lady Constance Lytton introduced the fourth resolution, which she called a "rider," as follows: "That no scheme for a reformatory juvenile community of this character can be satisfactory unless it includes provision for girls and women as well as for boys and men, either in the form of a co-educational community for both sexes, or of two separate branches (one for males and one for females) on similar lines." R. H. G.

Prison Needs in the State of New York.—Mr. O. R. Lewis, General Secretary of the New York State Prison Association, in an interview which appeared in the *World* of November 10, comments upon the need for a State Reformatory for misdemeanants and a second institution for feeble-minded criminals:

"The principal prison needs of this state," said Mr. Lewis, "are a separate cell for each prisoner in state prisons, employment for eight hours a day for all able-bodied men in state prisons, the marketing of all prison-made products in this state to the state and its political subdivisions, such as counties and cities; the introduction and development of industries in our county penitentiaries and jails; the centralization of administration of our penitentiaries and jails under a proper department of the state; the abolition of idleness and filth in many of our jails; the development of the women's farm and the farm

PAROLE METHODS

colony for vagrants and tramps; the creation of a separate institution or separate wings of an existing institution for feeble-minded criminals, not the insane criminals—and other things too numerous to mention.” R. H. G.

Prisons to Be Replaced by Penal Farms in Pennsylvania.—According to a report in the *Philadelphia Inquirer* of December 18, 1911, considerable progress has been made in Philadelphia toward the fulfillment of plans which have been formulated in that state to abolish penitentiaries and to establish in their stead a large penal farm to be located somewhere in the central portion of the state. A site has been purchased near Bellefonte. It is stated that all plans to move and rebuild both the Eastern and Western penitentiaries have been halted pending the submission to the next legislature of the plans for the penal farm. The idea of doing away with the penitentiary was first suggested by Warden John Francies of the Western penitentiary. R. H. G.

Proposed Prison Reform in Tennessee.—A night in the state penitentiary convinced Governor Hooper that reforms are necessary in the state prison system. He entered the prison one night recently to observe the condition of convicts who had asked Christmas pardons, and the next day announced he would grant several conditionally.

The governor said stripes would be taken off all convicts except incorrigibles, in the spring, and that a prison school will be started when the new chaplain takes charge. Governor Hooper is urging the adoption of the indeterminate sentence, the parole sentence, and a law which will give prisoners' dependent relatives benefits from their work in prison. R. H. G.

Parole Methods.—The following is taken from the *Chicago Tribune* for January 9th:

A long-resounding whack at parole board methods in loosing criminals while serving second or third terms for serious offenses was dealt recently by United States District Judge Kenesaw M. Landis.

Prefacing his remarks by saying he would not criticize the state authorities, Judge Landis called attention to the fact that two counterfeiters on trial before him had already served two terms in the penitentiary and were then released on parole while serving other sentences for burglary. It appeared to be the serious nature of the crime twice repeated which inspired the court's sharp criticism of the return of criminals to freedom.

The men were Joseph Ellingston, alias Dalton, and Richard L. Manning, both still under parole. Judge Landis listened to the testimony regarding their arrest while at work manufacturing half dollars and to a brief recital of their previous incarcerations.

"I do not mean any possible criticism of the Illinois state authorities," he said, "but it is worthy of note that these two defendants were paroled from Joliet penitentiary while serving sentences for burglarizing private houses."

"I agree with you, judge," interrupted Ellingston.

"That each defendant," continued the court, "had a burglary record behind him; that each defendant had been convicted of the same crime twice before."

Ellingston was promptly sentenced to three years' imprisonment in the federal penitentiary at Atlanta, Ga., and to pay \$100 fine. Manning was sen-

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tenced to the same fine and to a similar term in the penitentiary at Leavenworth. They will be taken away immediately.

The length of the term was noteworthy, inasmuch as Capt. Thomas I. Porter, head of the federal secret service in Chicago, had not urged a heavy sentence. He pointed out that the men will undoubtedly be rearrested by the Illinois authorities when they leave the prison.

The pair were arrested at 447 La Salle avenue, on December 16, by Captain Porter, Operative Peter Drautzberg, and United States Deputy Marshal William Crawley. They were caught in a room where there was a pot of molten lead, dies, and various bits of paraphernalia for making bad half dollars. The leaden slug was simply coated with nitrate of silver. About one dozen bad coins were seized.

James Brady, alias "King" Brady, and John Lawson were sentenced to prison by Judge Landis for selling stolen whisky without government licenses. The men pleaded guilty. Brady was given thirteen months in the Leavenworth prison and fined \$1,000 and Lawson, his accomplice, was sentenced to sixty days in the house of correction and fined \$1,000. They were arrested by internal revenue inspectors a few weeks ago and charged with disposing of six barrels of liquor which they had stolen from a car in the yards of the Chicago & Erie Railroad Company at West Fifteenth and South Clark streets.

The liquor was sold by the men to Eugene Huston, colored, who conducts a resort at 2511 South Dearborn street, and who is under charges by the federal authorities for smuggling cocaine. Huston paid the men \$250 for the liquor, and Brady and Lawson stole the property a second time from a cellar in which Huston had stored it and sold the liquor.

R. H. G.

Report of the Oneida County Probation Officer.—The second annual report of David W. Morris, probation officer for Oneida County, New York, has just been received. It covers the period from November 1, 1910, to October 31, 1911. This probation officer acted pursuant to the provisions of Subdivision 1 of Sec. 11a of the Court of Criminal Procedure Service in the County Court, the Supreme Court, the Rome City Court and courts of several towns and villages. Since boards of supervisors were first authorized in 1908 to pay salaries to probation officers appointed by county judges, twenty counties have made such appropriations. The following is an extract from the report:

RECAPITULATION OF FINANCIAL STATEMENTS.

Wages of persons on probation.....	\$43,306.75
Estimated expense avoided by keeping them out of prison.....	10,979.00
Estimated expense avoided by keeping families together and the children out of institutions.....	16,770.00
Money collected from probationers.....	2,194.95
Grand total	\$73,250.70

"My first report, covering a period of eight months, submitted to your honorable body one year ago, showed a total of forty-five cases on probation during that period, an average of something over five cases per month. The present report covering a full year shows a total of 130 cases, being almost exactly eleven cases per month, thus doubling the number last year. This has, of course, entailed a large increase in the work of this office and it necessarily follows that

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some increase in the facilities for performing the duties of the office be provided by you. If there has been any failure to do as much supervising as is desirable it is because of the impossibility of reaching the persons as often and as quickly as ought to be made possible. Some of the counties of this state have solved the problem by furnishing the probation officer with an automobile, or at least a runabout, and it has proved to be just the thing needed to make his work more effective. On some of our roads the service is so infrequent that it is impossible to make a trip in less than a full day, and even if the trains are convenient, it is frequently the case that the person lives several miles from the station. No argument is longer required to prove the importance of this work, and I feel sure that your honorable board will see the necessity of giving the officer all necessary aid in carrying on his work.

"The large increase in the use of the system of probation in this county is the result of the very general acquiescence on the part of the committing magistrates and judges who have manifested in a high degree the humanity and kindness toward offenders without which the system could not have had a fair trial here, and to them is due in large measure the praise for any success which it has had. Perhaps the best feature of this work is that sometimes called the 'domestic relations' feature, by means of which a considerable number of families have been kept together by placing the man on probation and requiring him to pay a definite sum per week, proportionate to his earnings, to the probation officer, for the support of his family. In nearly every case the offender has made good and paid promptly as agreed. This has, of course, been a good thing in many ways and the best thing about it is that in most cases the result has been a reconciliation and a re-establishment of the home.

"Because of the fact that the probation law is new and the practice not well settled, as yet, there has, from time to time, arisen a question about this or that feature of the law and no one has felt very sure as to what ought to be done in certain cases or in some emergencies. It is with great pleasure, therefore, that I am able to make the announcement that the State Probation Commission will soon publish a manual containing all the laws thus far enacted in this state on this subject, and I have no doubt that they will see to it that all courts are supplied with copies of this very useful publication.

"It will be seen by referring to the statement as to earnings of probationers that they have been quite steadily employed. It is with a very grateful feeling that I here acknowledge my indebtedness to those who have given employment to these persons, also to those who were previous employers and so kindly reinstated them in their places. Without such coöperation on the part of employers my work would have been very hard, indeed. Several large manufacturers, both in Utica and its suburbs, have been very kind in this respect.

"The 'unofficial cases' above referred to were handled without arrest on the approval of the District Attorney and the results have been good and the families of the offenders saved the disgrace of having the persons arrested and the publicity always connected with that procedure.

"I wish that I could say here that all who have been given the benefit of probation during the year had turned out well. There have been a number of decided failures on the part of persons to make good. But the court gave them a chance, and if they were too weak to benefit by the courts' leniency, it is their misfortune and they have been, with only two exceptions, rearrested and committed and are now serving, or have served, the sentences,

CENTRAL HOWARD ASSOCIATION

the passing of which was suspended when they were placed on probation. Perfection, however desirable, is too uncommon for us to expect that it will be attained in all these cases. The large percentage, however, that have and are making good, fills us with courage for the future, and it is hoped that no one who seems deserving will be denied the benefits of probation because of the failures of others."

A. W. T.

The Central Howard Association.—The latest report of the Central Howard Association was issued on January 1, 1912. The object of this association is understood, perhaps, by most of the readers of this JOURNAL. It is to render first aid to men who are disabled by terms of imprisonment. This aid consists usually in finding the man or the woman a place to work and to earn wages immediately upon his or her discharge. Every year the association helps many hundreds of unfortunates and despondents. The association sends notice to all men who are about to be discharged from prison in this and neighboring states, advising them that it is prepared to receive and find jobs for them without charge, provided they communicate with the association office. Fortunately, it has only to be known that the Howard Association stands ready to do this work when generous friends coöperate and sufficient work is offered. The records of the association for the year 1911 indicate that the total number of applicants for aid during 1911 was 1,456; number sent to employment, 1,247; number of men paroled to the association, 89; per cent of men successfully fulfilling their parole, 85; reported earnings of paroled men during the year, \$37,260; number of applicants under 25 years of age, 393; number of men below sixth grade schooling, 423; number giving drink or bad company as cause of downfall, 795; number of first offenders, 887; number having trades of any kind, 592; average cost per applicant for aid and service, \$5.83; cities in which the work has been presented in 1911, 214; addresses made to and in behalf of prisoners, 642; letters written to and in behalf of prisoners, 3,340.

Superintendent F. Emory Lyon and those who coöperate with him must be heartily congratulated upon the splendid result, which can be but partially and very inadequately represented in print.

Chief Probation Officer, the Hon. John W. Houston, contributes to this report an article under the title, "Probation and the Public," in which he states the provisions of the adult probation law which went into force in Illinois on July 1, 1911. With the provision of this law, many of our readers are already familiar. A defendant who has been found guilty or who has pleaded guilty may, under this law, before sentence is pronounced, but only then, request the judge to admit him to release on probation. The power of the court in such a case is limited to first offenders, and only to certain offenses, as follows:

1. All violations of municipal ordinances where the offense is also a violation in whole or in part of a state law.
2. All misdemeanors, except as limited, the limit being a money value of \$200 where property is taken or injured. (Misdemeanors include all offenses against state laws not punishable by death or imprisonment in the penitentiary.)
3. Larceny, embezzlement and malicious mischief, under \$200.
4. Burglary under \$200 value, where the place burglarized was not a business house, dwelling or other habitation.

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5. An attempted burglary, limited in the same way.
6. Burglary, where the burglar is found in a place other than a business house, dwelling house or other habitation.

These limitations were wisely made to prevent the misuse of the law by releasing the defendants who were guilty of greater offenses. The laws of Massachusetts and New York, on the other hand, permit probation in any case of crime or misdemeanor. Under the Illinois law the defendant may be placed on probation only under the probation officer who is appointed in accordance with the statute. As expressed by this law, the purpose of the legislature was to prevent and save defendants from the disgrace of having been in jail, not to place prisoners on probation who are already in jail. This opens up the way by which a first offender may be placed under distinct educational control by requiring him to make restitution in weekly or monthly payments to the person whom he has wronged. The sword of justice is always suspended over such a person and he knows that if he fails to live up to the conditions of his probation, he will have to suffer the penalty of the law.

One of the most helpful features of the law is its application to men who are guilty of non-support of their families. It is a tremendous injustice to the family to send such men to prison, and the law cures this injustice by empowering the court to require the defendant to pay so much per week and by empowering the probation officer to see that the money is paid and to smooth over the family differences for the general good. This system results in keeping together many a family that would otherwise be separated and it has been accompanied by good results, both in Massachusetts and in New York.

This is all very good, but after all it is absolutely impossible to realize the benefit which such a provision as our probation laws may bring about, unless the public will heartily coöperate. Employers of labor must be educated out of their prejudices against the man or the woman who has come under the hand of the law at least to the extent of showing in a practical way their willingness to give the culprit a chance. So far, Mr. Houston says, the law is working well. The probation officer has had about 140 probationers in two months' active work. While it is early to show results, he says that he knows of many cases where he is sure it will be the means of doing great and lasting good.

R. H. G.

POLICE.

The Use of Police Dogs: A Summary.—1. All hunting dogs are unreliable for police work.

2. Police officers using police dogs will have more occasion to deal with female criminals in the future than in the past.

3. The common people will be most affected by the system of detection which employs the police dog. Every police officer should therefore exercise care to direct his dog in a considerate and tactful manner.

4. City criminals and professional criminals will give the police dogs most difficulty.

5. The peculiar odor of human beings is caused especially by the sebatic acid, which is contained in the perspiration.

6. The transfer of the redolent sebatic acid of the perspiration on the impression of the foot or the hand is effected directly when these parts of the body are not covered by clothing; when they are covered by clothing such as stockings, shoes or gloves,

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(a) It is effected by the diffusion of the perspiration through the clothing to the floor or object touched by it; or,

(b) It is effected by the wearing away of a layer of the clothing of the hand or foot which has been saturated with perspiration; or,

(c) It is effected by the leaking of the perspiration, which has been stored in the clothing of the hand or foot, into the damp ground or into the damp object which has been touched.

7. Redolent particles are scattered upon the ground in walking by the motion of the trousers or skirts. The soles of the shoes also allow redolent particles to pass through.

8. A criminal frequently leaves more redolent clues at the seat of the crime than an ordinary man, that is to say, from

(a) Perspiration caused by working.

(b) Perspiration caused by fear or rage.

(c) Perspiration caused by intoxication.

(d) The contact of his clothing, which has been greatly saturated by his personal odors, with objects at the scene of the crime. The scent is especially strong in the case of declining individuals.

(e) Leaving a musty odor which lingers for a long time in retired places; to this odor there is frequently added the odor of alcohol or gin which comes from the breath.

9. On account of physiological reasons the soles of the feet give the most redolent particles.

10. The scent of the whole body may be obtained from the hand.

11. The redolent particles of the perspiration are, physically, either fluids or gases. Redolent clues are quite quickly destroyed by Nature, especially

(a) By reason of the peculiarly high grade volatility of the redolent substances of the perspiration.

(b) By atmospheric precipitation in the form of rain or snow.

(c) By great warmth.

(d) By movements of the air or wind, by means of which the evaporation of the redolent substances of the perspiration is hastened.

(e) By the ammonia and the humus of the ground.

(f) By being destroyed or hidden by its being stepped upon by other persons or by cattle.

12. The dog is less able to work out clues in very warm weather, because molecules of the scent quickly spread and are divided so much that it is difficult to perceive them when they are diluted to this extent.

13. The dew of morning and evening enlivens the clues, because slight dampness causes the redolent particles, which are locked up in a dried covering, to be unbound, to spread and to evaporate more efficaciously.

14. The redolent particles of the perspiration (sebacic acid) are not changed by contact with glass or glazed substances; glass cases are on this account the best receptacles for preserving substances belonging to the criminal.

15. A bitch frequently performs more certain service, because she is less likely to permit herself to be diverted by sexual odors than a hound.

16. It is impossible to render the feet, the hands, and the footsteps free of odors.

17. The dog works out all clues furnished by footsteps, whether they are made by bare feet, by feet which have been cleaned, or by feet which are clothed

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in stockings or shoes, or even if the shoes or the feet have been wrapped up in some substance or if the individual walks on stilts.

18. If the feet are smeared with substances which retard perspiration or which destroy the odor of perspiration, or which are odorless, the dog nevertheless tries to follow the clues.

19. There are no substances which are odorless to the nose of the dog.

20. A criminal is neither able to hinder the work of the dog, nor to make it more difficult by smearing or saturating his shoes with substances which have a strong odor which is very distinctly unpleasant to the nose of the dog. The dog works out such changed clues with greater avidity and with greater certainty than ordinary clues.

21. When very strong odors are present which are unpleasant to the nose of the dog, such as the odors of decomposition, tobacco smoke, or the odors of colonial produce, the police dog is not only able to recognize a particular other odor which is exceedingly fine but is even able to take it up.

22. The police dog works even in the presence of odors which irritate the mucus membrane of his nose very much.

23. If the dog is obliged to work in a room which is filled with a strong unpleasant odor, such as the atmosphere of a saloon, a factory or a colonial market, the dog quickly becomes accustomed to this and can begin to work with success.

24. The dog also learns to search for and bring forth buried articles in badly decomposed places, even though the dog otherwise carefully avoids touching with his nose or with his paws any chemical substances which have a bad odor. This is useful in cases in which criminals bury articles of value and cover the spot with decomposed matter.

25. The dog possesses the ability to focus his organs of smell quickly and effectively upon strong and very weak odors for the purpose of recognizing them. The dog possesses a high ability for accommodation.

26. The dog is able to follow the odor of a person in the presence of strong odors of decomposition, and even under confused and difficult conditions, or complicated conditions of smell.

27. The dog follows clues made by rubber shoes or wooden shoes as well as the clues made by ordinary shoes.

28. The dog finds and follows such clues made by rubber shoes or wooden shoes, even if he has received only the odor of the person and not the clue.

29. The dog follows clues that have been made by new or strange shoes—

(a) If he gets the scent at these clues.

(b) Not only when he has received a little suggestion of the shoes.

(c) But also in the absence of such a suggestion, if the dog has recently received knowledge of the person's odor.

30. The longer a person walks in strange or new shoes, the more will that person's own odor permeate his shoes.

31. At the end of such a clue the dog is also able to point out the person who used the strange shoes.

32. The dog works out the clues of wheels, with avidity and certainty under the following circumstances:

(a) If he is placed directly on the given scent.

(b) If he has been previously given the scent on the rim of the wheel.

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(c) If he has received only the scent of the person and has no knowledge of the wheel, provided that the person has ridden away on his own wheel.

(d) He is also able to follow these clues with certainty in complicated conditions.

33. If the criminal rides away on a strange wheel and the dog has only the scent of the person's own odor, without having received the scent of the wheel, the pursuit of the scent may succeed under favorable circumstances, but as a rule success is impossible.

34. The dog also works out the clues of wagons with ease.

35. Articles may be placed unnoticed in places that are frequented by persons having criminal objects in mind, with a view to making easier the work of the dogs which may later be placed on the scent.

36. When dogs are kept in rooms which are filled with tobacco smoke it has an injurious effect upon their noses.

37. When the nose of the dog is brought into contact with a strongly smelling substance, its keenness is for a time lessened, even though it is not entirely crippled.

38. Traveling by railroad or by carriage, while on a scenting trip, has a disadvantageous effect upon the welfare of some dogs, because of the shock, which affects the digestive organs so as to cause nausea. The officer who uses police dogs must bear in mind such weaknesses of individual dogs.

39. Dust has a particularly bad effect upon the ability of the dog to follow clues.

40. Feeding the dog before it is put to work on articles having a sharp smell and taste, such as cheese, flesh, smoked fish or highly spiced food, lessens its ability to follow clues.

41. If the dog is not given a variety in his diet or if the dog is deprived of his usual fare, errors in his tastes will arise, and he will also look for articles of food on the street. An extra allowance of the regular fare renders easier the training of the dog in abstaining from taking food offered by strangers.

42. The officer using a police dog must avoid touching the articles left at the seat of the crime by the criminal, and must also prevent the dog from touching them when he takes the scent, so that subsequently the scent may be given to other dogs on the same objects.

43. Small objects which have been left by criminals are best preserved in wide-necked bottles made of glass and sealed with glass tops; in case of necessity they may be kept in carefully washed preserve jars.

44. As the human scent is preserved for weeks or months in such receptacles the dog can discover an accused person from among many others by taking the scent from the objects preserved in this way, even after a long lapse of time.

45. To freshen the scent of substances preserved in this way, the glass receptacle which contains this substance should be held for a few seconds over the kettle of boiling water, and the steam should be permitted to affect it, before giving the dog the scent at the opened receptacle.

46. The mere pointing of the dog to a person is not sufficient to determine that he is the criminal. There must be additional evidence. The science of the police dogs cannot dispense with the assistance of the other methods of

CURRENT POLICE TOPICS

criminology. Therefore, the officer using police dogs must be careful not to disturb important positive documents to favor the work of the dog.

47. Only such men are suited to the duty of working with police dogs as possess, in addition to an especially good disposition for the training of dogs, good power of observation, sagacity and the power of critical observation.

48. The police dog should not be employed in trifling cases, but only in important cases.

49. In the future the criminal who has been trapped by a police dog will not confess so readily as he has done in the past when the ability of the dog astonished him. In course of time the police dog will lose in his ability to make an impression. On this account the other methods of criminology must be employed with emphasis to discover criminals.

50. In spite of all efforts on the part of criminals to thwart the police dog he will in the future certainly furnish sure and reliable assistance to the police authorities.

LEONARD FELIX FULD, Ph. D., New York.

Current Police Topics.—President Sylvester's annual address to the American Association of Chiefs of Police (printed in the *International Police Service Magazine*) is a most interesting survey of the police profession to-day. The position which the modern police force occupies in urban life, the natural but mistaken antipathy which the ordinary person feels toward the guardians he has placed over himself, the advantages of co-operation and organization which this voluntary body of police heads offers are made very clear. In a similar way the development of juvenile courts, houses of detention, and better methods of dealing with street traffic and vagrancy are brought out. Two most important tendencies fast making their way into all American departments are the disciplining of officers by punishment duty or the demerit system rather than by fines, and by the better instruction of recruits. The benefits of organization could be greatly increased if the annual reports of all the departments were systematized and some explanatory comment added. Commissioner O'Meara of Boston has done this with all his reports since his appointment and they are thus made doubly valuable to the professional officer and to the student.

There is perhaps no subject about which the public at large knows less and believes more trash than about the "third degree." Another report has exonerated policemen from the vague and unfounded charges which were investigated upon the demand of some credulous and over-sympathetic people. This time the report was made by a United States Senate Committee. No well-defined case of "third degree" methods was found in the federal police force, although diligent search was made. It seems about time that the public should realize that skilful questioning of suspected criminals is not physical abuse, but may very well be more distasteful than physical abuse to a real criminal who is a bungling liar.

Closely allied to the legitimate "third degree" are the various methods of criminal identification. These depend as much upon the scope of the system as upon the accuracy. American departments are inferior in the former respect since only 169 departments have any system at all, and the Central Bureau of Identification at Washington is neither as large nor as effective as that in London. The finger print system of identification gives all the accuracy that could be desired once a criminal has been caught, but it does

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not afford a ready means of recognizing a person upon the streets. This deficiency has been filled by the genius of evil, M. Bertillon, who has devised a facial index system. The nose, ear and eyes are classified in such a way that an officer can eliminate all but a few persons in a crowd with a single glance and when tried out the system has had almost universal success, and should be introduced into America at once.

The human eye trained to recognize faces by such methods as this is very accurate, but it is proverbially a poor thing to rely implicitly upon the testimony of eye-witnesses and the eye is also subject to limitations which the photographic plate does not have. A powder has recently been devised which will make finger prints so clear that they can be photographed for identification purposes, even when quite invisible to the naked eye. The camera has also been used to detect traces of blood upon a cloth which had been washed, to find the design of counterfeit banknotes upon a lithographic stone which had been cleansed, and to detect marks upon a body which showed that the person had been strangled before being thrown into the water. With such advances as these a criminal will have to wear gloves or leave a trail like an aniseed bag behind him, and even then it may not avail him much.

GEORGE H. McCaffrey, Cambridge, Mass

Our Police Station Disgrace.—Under the above title the Chicago *Tribune* for November 24 editorially comments as follows upon the work which the Chicago Women's City Club has accomplished through its investigation of conditions surrounding women delinquents and unfortunates. This investigation now is made the basis of an appeal for a large downtown detention home, the improvement of facilities at police stations and a night court.

Bad sanitation in the stations and the vicious system of herding women of all degrees of innocence or depravity, and of all ages, from young girls just above the juvenile probation age, are especially protested.

The report of the committee on stations and jails exposes a treatment of prisoners which is, indeed, "a menace and a disgrace to Chicago," and the council ought to take hold of the whole situation and under intelligent advice make an end of it. Chicago is not a cruel or unenlightened community, and does not want any such evils to exist. It is time that the stations and jails and the system of handling prisoners prior to trial or commitment to the county jail be brought up to the twentieth century standard. It is now about 200 years behind the conscience of the times.

R. H. G.

The Report on Police Reform in Chicago.—The report of the City Civil Service Commission on police organization and its relation to vice conditions is a valuable document. And it is hardly less valuable for being corroborative rather than originally informative. The sorry record it makes of the vicious alliances of lawbreakers and sworn law enforcers is not remarkable for new facts, but it should drive into the consciousness of Chicago the need for drastic action.

The recommendations of the commission are sound as far as they go. But they must be worked out in detail and courageously applied.

Thus far the commission's investigation has brought substantial results. The weeding out of principal offenders and the exposure of incompetence and

DEPUTY STARK OF TORONTO ON THE THIRD DEGREE

dishonesty should proceed unflinchingly. This is a necessary clearing of the ground.

But clearing the ground is less than half the task. After that must come constructive work, the thorough reorganization of the police department on new lines. This will take time and a bitter fight. Success will depend largely upon the man chosen to be head of the department. But supported, as such a man, we believe, will be, by Mayor Harrison, and assured of time to accomplish his work thoroughly, he can destroy, so far as Chicago is concerned, the most persistent evil in American municipal government.

The report is reproduced in part in this issue.

R. H. G.

The Man at the Top of the List.—The Chicago *News* under date of December 11, 1911, comments under the above title upon a recent order of Mayor Harrison with reference to the making of promotions in the police department of Chicago. He has advised the general superintendent of police that in each instance the man whose name stands at the top of the civil service list of eligibles shall be chosen for promotion. Such a procedure, he points out, "will aid in removing political influence from control of the police department because men will know their promotions will depend upon their own fitness and not upon any outside influence which may be brought to bear in their behalf."

Hitherto appointments have been made from among the three persons whose names stand at the top of the list of eligibles. This practice has arisen because of the conviction that it would not be possible in every case to select an entirely efficient candidate by means of the tests in vogue and consequently the head of a department was given some leeway. The plan developed disadvantages. It has not eliminated the influence of personal favor. It gives the appointing officer opportunity to secure agreements from persons about to be appointed. It prepared a field for blackmail.

When men in the police service have it proven to them that fitness instead of influence is absolutely efficient in determining promotion the results will be salutary.

R. H. G.

Deputy Chief Stark of Toronto on the "Third Degree."—Deputy Chief Stark, in a strong article on "Police Methods and Their Critics," in the August, 1911, number of the *International Police Service Magazine*, assails the popular ideas on the "third degree" and those lawyers whose main ability consists in deriding witnesses, distorting evidence and even insulting their opponents with impunity. He claims that popular knowledge of the "sweatbox" is such that few could define the difference between it and a "soapbox," although they would gladly join in condemning it. Newspapers are often only too willing to dilate upon the supposed horrors of this system of obtaining evidence. I have seen the actual operation of a "third degree" case which obtained a complete confession of two criminals engaged in a variation of the "green goods" game within eight hours after the case was reported. The police worked upon the basis of two words carelessly dropped by the first two men arrested in regard to the third, who was the leader of the plot. Only once during the whole examination was a voice raised above a conversational tone, and then to forbid the prisoners talking further in a foreign tongue. In another case the confession of a stubborn juvenile was obtained only by strapping him in a surgeon's operating chair and ordering another officer to "turn the current on

FIRST ANNUAL MEETING OF THE ILLINOIS SOCIETY

slowly at first." The result was the breaking up of a dangerous gang of burglars and transom workers. I think that anybody objecting to such methods is either criminal himself or quite too soft-hearted for a police critic.

The sarcastic and glib lawyers surely ought to be squashed at every opportunity, for not only do they add to the growing contempt of the courts, but decrease the willingness, small at any time, of private citizens to testify in court, and to make still more disagreeable the task of enforcing the law which every police officer finds is approved loudly in general and as loudly scoffed at in particular.

GEORGE H. McCaffery.

MISCELLANEOUS.

A Correction. In my editorial in the January number of this Journal, on Judicial Discretion versus Legislation in Determining Defendants Suitable for Probation, the range of offenses to which the Illinois Adult Probation Law applies was for some reason mis-stated, although I had carefully read the law and remember its provisions perfectly as I first read them. I wish to have the provisions stated correctly in this place as follows:

All violations of municipal ordinances where the offense is also a violation, in whole or in part, of a statute.

All misdemeanors, except as hereinafter limited.

The obtaining of money or property by false pretenses, where the value thereof does not exceed two hundred dollars (\$200).

Larceny, embezzlement and malicious mischief where the property taken or converted or the injury done does not exceed two hundred dollars (\$200) in value.

Burglary, where the amount feloniously taken does not exceed two hundred dollars (\$200) in value and the place burglarized was a place other than a business house, dwelling or other habitation.

Attempt to commit burglary when the place attempted to be burglarized was a place other than a business house, dwelling or other habitation.

Burglary, when the burglar is found in a building other than a business house, dwelling or other habitation.

A. W. T.

Program of the First Annual Meeting of the Illinois State Society of the American Institute, Thursday and Friday, May 9 and 10, at the School of Pharmacy Building of the University of Illinois, Twelfth street and Michigan boulevard, Chicago:

Annual address by the President, O. A. Harker, Dean, University of Illinois Law School, Urbana.

Crime conditions in Illinois: Evidences of the increase of crime, if any; the need of more adequate criminal and judicial statistics in Illinois; causes for crime and suggested remedies.

Paper by Professor Charles R. Henderson, University of Chicago.

Discussion by Nathan William MacChesney of the Chicago Bar, and Robert H. Gault.

Existing methods of dealing with juvenile delinquents in Illinois. Suggestions for possible improvements.

Paper by Clyde E. Stone, Judge, County Court, Peoria.

Discussion by Harry E. Smoot of the Chicago Bar; Richard S. Tuthill, Judge, Cook County Circuit Court, Chicago.

FIND NO UNJUST HANGINGS

Present status of probation and parole in Illinois; the adult probation law. Should the principle of probation and parole be extended? If so, under what conditions and restrictions.

Paper by E. A. Snively, member Board of Pardons, Springfield.

Discussion by John E. Lewman, State's Attorney, Danville.

Organization of courts. What changes, if any, are desirable?

Paper by Professor Albert M. Kales, Northwestern University Law School.

Discussion by

Criminal procedure. What changes, if any, would result in the improvement of the existing methods of administering the criminal law?

Paper by William N. Gemmill, Judge, Chicago Municipal Court, Chicago.

Discussion by I. M. Wormser, Assistant Professor of Law, University of Illinois Law School, Urbana. CHESTER G. VERNIER, University of Illinois.

Find No Unjust Hangings.—That the people of the United States may learn to have more respect for decisions of the criminal courts, the American Prison Congress, which closed its annual convention in Omaha, in October, 1912, will carefully investigate every reported case of unjust conviction and will try to discover if the death penalty has ever been inflicted upon an innocent man. The congress already has devoted an entire year to its search for a case of capital punishment wherein there was reasonable doubt as to the guilt of the victim. So far it has discovered not a single case. This search was carried out in every prison in the United States and in Canada, a personal letter having been sent to the warden of every state prison in both countries. Each official was asked the following questions:

1. Have you personal knowledge of the execution of any person on conviction of murder whom you believe, from subsequent developments, to have been innocent?

2. Have you personal knowledge of the imprisonment on conviction of heinous crime of any person whom you believe from subsequent developments to have been innocent?

3. If either of the last two questions is answered in the affirmative, was the victim a worthy person?

To the first question, every warden in the United States and Canada answered "No" unequivocally, with the exception of Col. R. W. McClaughry, warden of the government prison at Fort Leavenworth, Kan. Col. McClaughry was not sure, but said: "I know of one or two who may, in my opinion, have been executed wrongfully." Warden Fogarty of the Indiana state prison wrote: "I have no knowledge, personally, of the execution of an innocent person; however, I have no doubt whatever that some innocent men have been executed." To the second question a number of prison officials answered "Yes," qualifying their statements by answering question No. 3 by a negative answer. Warden McClaughry answered, "Yes, a very few," adding, "In neither case could the party have been called worthy." Warden Alston, of Wyoming, says: "Yes, I am confident I know of one man in our state who was convicted and sent here who was innocent." "But," adds the warden in answering No. 3, "he was of a drunken disposition and had he been a sober man would never have been suspected or accused. Warden Russell, of Marquette, Mich., writes: "I don't think from my experience as a warden of this prison that the courts make many mistakes." Dr. Gilmour, of Toronto, answers question No. 2, "Yes,"

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and adds, as an answer to No. 3, "Most worthy, and results sadder than the sad." Supt. C. C. McClaughry, of Boonville, Mo., answers "Yes" to both No. 2 and No. 3. Warden Fuller, of Ionia, Mich., writes: "During the seventeen years I have been warden I know of only one case of wrongful conviction, for offences against property. One prisoner was sent here for stealing a cow and another prisoner afterwards confessed he had committed the crime charged against the other man in order to get rid of the man, with whose wife he was infatuated. Warden Fogarty, of the Indiana state prison, writes: "I have not been convinced by subsequent developments that any man convicted and sentenced here for a heinous crime is innocent." The famous case from the Western Penitentiary, Pittsburgh, wherein a prisoner served fifteen years, was pardoned, and pensioned by Carnegie, and heralded as innocent, is treated in the following report: "Your committee had previously taken pains to write to the warden of the prison mentioned, but the information elicited did not indicate that the prisoner had been declared innocent, but was to the effect that the man had been discharged in the usual way." The writer of the report says: "The writer has for some years made it a practice to follow up with correspondence or otherwise the most widely published and sensational accounts of hardships experienced by innocent persons under judicial conviction, and has been surprised at the meager basis upon which such reports rest, though he finds that they are generally given credence by the reading public. Perhaps his (the secretary's) report may tend to establish confidence in the courts on the part of those who are not informed and who have neither the means nor the time, even if they have the inclination, to inform themselves, and it might be a good beginning in the effort on the part of the institutions to be understood by the public."

R. H. G.

Prosecutions by Boards of Health and Tenement House Supervision in New Jersey.—The *New Jersey Law Journal* for December comments editorially as follows:

"The State Board of Health and the Board of Tenement House Supervision have had some seventy penal suits brought in this state alleging violations of the laws which the two boards are charged with enforcing. More than fifty of the suits are brought by the State Board of Health as a result of the pure food campaign which is being pressed with vigor by the food and dairy divisions of the board. Most of the health suits in the present batch are for violations of the law regulating the supply of milk, and disposing of a mixture of olive oil and cottonseed oil as pure olive oil. Some twenty more suits are against farmers and dairymen charged with trafficking in bob veal. The preparation of the cases for trial, including the procuring of the necessary evidence and the drawing of the papers, has involved a vast amount of labor and the trials themselves promise to keep the penalties division of the Attorney-General's office busy for some time. The suits were made returnable at various dates extending between November 21 and December 22. Prosecutions for violation of the Tenement House code have thus far been only in Newark and Jersey City."

R. H. G.

The Work of the Law Division of the Library of Congress.—"The Law Division of the Library of Congress is making a systematic effort to bring its collection of foreign law to a state of high efficiency. The growing interest

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in comparative law manifested by legislators, lawyers and scholars has indicated the utility and stimulated the acquisition of a well-developed laboratory of comparative law, in which shall be represented the best legal literature of the important states of the world.

"A well-defined policy has been pursued in securing the information necessary for the purchase of the most useful legal literature. In May, 1910, Mr. Edwin M. Borchard, now Law Librarian, was appointed as expert in international law to the American Agency in the North Atlantic Coast Fisheries Arbitration at the Hague. Taking advantage of his presence in Europe, Mr. Borchard, at the conclusion of his mission at the Hague, visited the principal countries of western Europe in order to secure, by personal interview, information from lawyers, judges, professors and law librarians as to the important legal literature of their respective countries. Opportunity is now taken to express thanks to the following gentlemen for their valued coöperation in the undertaking:

"Mr. Woltenbeek Müller, Justice S. Gratama of the Supreme Court of Holland, Mr. Limburg and Mr. Trip, all of the Hague; Dr. G. de Level, Dr. H. de Boelpaepe, of Brussels; Dr. C. Neukirch and Dr. Kauffmann, of Frankfurt; Dr. Edouard Clunet, Mr. F. Allain, Mr. C. F. Beach and Prof. Paul Viollet of Paris; M. Paul Privat, and Profs. Martin and Reyfous of Geneva; Prof. E. Huber and Dr. Koenig of Berne; Prof. F. Meili, Dr. Schneeli, Dr. G. Wettstein and Dr. Letsch of Zurich; District Attorney Enea Noseda, Dr. E. Crespi, Dr. Luigi Ansbacher and Dr. Ernesto Tamanti of Milan; Dr. Bizio Gradengo, Dr. G. Diena and Dr. Sacerdoti of Venice; Prof. A. Catellani, of Padua; Prof. Karl von Amira, Prof. E. Ullmann and Dr. K. Veit of Munich; Dr. A. de Griez, Dr. Josef Stammhammer, Dr. A. Fischer-Colbrie and Prof. Heinrich Lammasch of Vienna; Dr. S. Salzburg and Dr. Kaiser of Dresden; Prof. Ludwig Mitteis and Prof. Karl Schulz, law librarian of the German Supreme Court of Leipzig; Dr. Georg Maas, Dr. H. Klibanski, Dr. Ernst Delaquis and Dr. Konrad Gutmann of Berlin; Profs. A. Torp and H. Jorgensen and Dr. W. Angelo of Copenhagen.

"Since December, 1910, further information has been sought in a systematic campaign conducted by correspondence with leading jurists in the countries not personally visited. The correspondence has been carried on in French, German and Spanish, which languages have been found sufficient for all practical purposes. Gratifying responses have already been received from the following gentlemen, to whom occasion is here taken to express our appreciation and thanks:

"J. F. N. Beichmann, Chief Justice of Norway, Drontheim; Prof. Knud Berlin, University of Copenhagen; Dr. Francis Hagerup, Norwegian Ambassador to Denmark; Dr. Antonio Mesquita de Figueiredo, Lisbon, Portugal; Dr. Ramon Sanchez de Ocaña, of the ministry of justice, Madrid, Spain; Senator Don Francisco Lastres, Madrid, Spain; Prof. Torres Campos, Granada, Spain; Prof. H. Lamba, Cairo, Egypt; Dr. A. Tarica, attorney, Smyrna, Turkey; Prof. José A. de Freitas, University of Montevideo, Uruguay; Dr. Von Veh, Berlin, Germany (Russian law); Prof. Karl Adler, Czernowitz University, Austria; Prof. Josef Redlich, Vienna University, Austria; Prof. Ullisse Manara, Genoa University, Italy; Prof. Gino Dallari, Siena University, Italy; Baron Hector Rolland, Monaco; Prof. Petr. J. Kazansky, Odessa, Russia; Prof. Gerardo Berjano y Escobar, Oviedo, Spain.

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"Most of the countries of Latin America, the Near East and Asia are still to be heard from.

"The information thus secured is, after a process of comparison and selection, made the basis for the purchase of the most important legal works of the respective foreign countries. It has been considered advantageous, upon the arrival in the library of a sufficient number of such works, to make public the resources of our foreign law collection. This undertaking is to consist of the preparation by the Law Librarian, of guides to foreign law and critical surveys of the important literature. The first publication, a guide to the law and legal literature of Germany, is to appear in February. The surveys for Austria-Hungary, France, Italy, Spain and the other countries of Europe are to follow, it being proposed to publish two or three monographs a year. These guides are to serve as introductions to foreign law for the American lawyer and as aids to investigators in finding the law. The enterprise has met with the heartiest endorsement of the Comparative Law Bureau of the American Bar Association."—Extract from the Report of the Library of Congress for 1910-11, Edwin M. Borchard, Library of Congress.

Mr. Borchard is now preparing a guide to the law and legal literature of Germany, which will make a monograph of about 170 pages. It is his plan to publish two monographs a year, taking up the European countries in the order of their importance.

R. H. G.

Picture Shows and Juvenile Crime.—One of the features of the discussion at the state conference of the New York State Society for Prevention of Cruelty to Children and Animals was the moving picture evil. The committee which had the subject in charge reported in part as follows:

"It is not a rare sight to see boys and girls engaged in mimic holdups on the streets, following all the details of the moving picture shows. Amateur burglars have robbed houses exactly as portrayed by the pictures, and one cannot estimate the evil done through mock representations of bloodshed and crime.

"The report of the district attorney of New York for cases brought in the boroughs of Manhattan and the Bronx for the past eleven months shows the following crimes traced directly or indirectly to moving picture shows:

"Unmentionable crimes, 3; aggravated assaults, 32; attempted assaults, 6; abductions, 3; indecent assaults, 3; impairing the morals, 15—a total of sixty-two cases, on which there were forty convictions and thirty-two offenses committed to state's prison."

The picture show may be made an educational factor of great value to boys and girls in the congested districts of our cities, and for that matter in other districts as well. The real problem is, therefore, not how to suppress such exhibitions, but how to supervise and control them.

R. H. G.

"International White Slavery."—Under the above title *The Light* for January, 1912, publishes an address which was delivered by the Hon. James Bronson Reynolds, Assistant District Attorney for New York City, a recognized authority on the international white slave traffic, before the last Sixth International Purity Congress at Columbus, Ohio. Mr. Reynolds sets himself the problem of discussing facts regarding the warfare with this traffic in foreign lands, and to show our relations to this international struggle to anni-

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hilate the traffic. It is not strictly a *white* slave traffic. All colors are involved. Our responsibility and our duty are independent of the color of the victims.

The treaty of Paris, of May 18, 1904, is officially known as the "project of arrangement for the suppression of the white slave traffic." Its ratification is an event deeply significant of the fresh confidence with which the twentieth century is grappling with the great evils which stand in the way of the social and moral progress of mankind. It is the first treaty made by the great powers of the world in relation to social morality. To it all the leading powers of Europe, from Spain to Russia, Turkey alone excepted, gave their adhesion. And with the approval of the Senate, the President of the United States, on June 15, 1908, proclaimed the adhesion of the United States to the treaty. The high contracting powers, to quote the terms of the treaty, "being desirous to assure to women who have attained their majority and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of trade in white women, have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose."

That the significance of the treaty may be better understood, Mr. Reynolds summarized its most important purposes as follows:

"Article 1. Each of the contracting governments agrees to establish or designate an authority who will be directed to centralize information concerning the procurement of women and girls, for the purpose of their debauchery in a foreign country. That authority shall be empowered to correspond directly with the similar service established in each of the other contracting states.

"Article 2. Each of the governments agrees to exercise supervision of railway stations, ports of embarkation and of women and girls in transit, in order to procure all possible information leading to the discovery of a criminal traffic. The arrival of persons involved in such traffic, as procurers or victims, shall be communicated to diplomatic or consular agents.

"Article 3. The governments agree to inform the authorities of the country of origin of the discovery of such unfortunates and to retain, pending advices, such victims in institutions of public or private charity. Such parties will be returned after proper identification to the country of origin.

"The treaty, therefore, seeks to accomplish four objects: (1) to centralize information regarding the white slave traffic; (2) to provide governmental protection of girls and women traveling from one country to another; (3) to give official protection to the victims of this traffic; (4) to pursue and punish the promoters of the traffic by all the means in the possession of the respective governmental authorities."

It is through the helplessness of the foreign prostitute that the power of the "pimp" has been developed in this country. The rapid development in numbers of these male beasts within recent years in our cities is due to the helplessness of the foreign imported prostitute. Many of them control American girls, but their power rests upon the authority which they so easily exercise over the foreign-born. To prove the conditions, Mr. Reynolds states a few facts from many that have been established by careful authorities: The Marquis of Calboli, the first Secretary of the Embassy of Italy to Paris, stated in 1902 that Italian padrones conveying Italian workmen

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from Italy to France included among them young Italian girls. After these had served the pleasure of their master, being then in a foreign country, they were sold by him to various customers.

"It was stated at the Conference of Amsterdam in 1901 that large numbers of women, estimated at 1,200, were embarked annually from the port of Genoa for South America, for immoral purposes. These came mainly from Austria-Hungary, Russia, Poland and France. South America provided itself with this wicked commodity not only from the countries above named, but from Spain, Portugal and the center of France. Buenos Aires was named as the principal port arrival. Later the traffic was said to have been transferred to Montevideo and Rio Janeiro. Buenos Aires is still a prominent port of entry in South America. London, Liverpool, Southampton, Dublin and Bremen were reported to be ports of embarkation to New York and New Orleans. Austria was declared to be an important market for German and French women. In the Orient, principally in Turkey and Asia, Greek and Italian women were said to be in great demand, and the demand supplied. Constantinople, the great international depot for white slaves, furnished Austrians, Roumanians and Russians. Thirty-three per cent of the prostitutes of Smyrna and Beirut were said to be Austrians. Austria furnished three-fourths of those imported into Egypt.

"According to the statement of a former high officer in the Ottoman army, there is no country in the world where the white slave trade flourishes to the same extent as in Turkey and that to the advantage of the higher classes, and even of the Sultan himself. This statement was, however, made in the reign of Abdul Hamid. The region most exploited is Circassian Russia, covered constantly by recruiting agents; but almost equally active recruiting is done in the interior of the Turkish Empire. The unfortunates of Turkey were said frequently to be passed on to Bombay and Calcutta, thence to the Dutch Indies, landing finally at Batavia or Singapore.

"Many European girls and women are transported to South Africa, notably the Transvaal. In general, Europe is an exporter, and the movement of its traffic in women appears to be principally as follows: To North and South America, to the Orient, with Turkey, Egypt and India as the great landing stations, and finally to South Africa. According to the reports made, Austria held and still holds first place in such exportations, France the second and Italy the third."

The record of white slave traffic from our Pacific Coast to Japan and China presents a still darker page for the reason that we assume to stand before the Orient as pilots and guides to the best results of modern civilization, yet in many Oriental cities the inhabitants have been so accustomed to looking upon the splendidly-gowned American prostitute in her richly-equipped carriage that for them the term "American Girl" has become synonymous with the term "prostitute." A recent action of the American government in refusing protection to these American prostitutes has somewhat relieved the situation. This improvement was due partly to the courage and persistence of an Ohio judge in Shanghai—Judge Wilfley. Since his return to this country, the campaign against these prostitutes in the Orient has been less effective. This iniquity follows all the rules of trade and trade movements. It does not matter whether we can proclaim the existence of an organized syndicate. The statements of leading official and unofficial authorities

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in Europe establish, however, that in some form these traders have social and commercial solidarity through which they achieve easy communication and a business success. They have recognized vocabularies for cablegrams and correspondence and establish way stations of the traffic. They have all those agencies which facilitate the successful handling of the business, promote its expansion and the transportation, delivery and exploitation of the goods.

"Finally, let me offer two general observations regarding the international white slave traffic. If it be true that we are opposing a commercial proposition, then it follows the rules of trade, and the law of supply and demand, and may be injured just as any other trade may be injured. If the occupation of procurer is made more dangerous through executive activity and national legislation, the number entering the traffic will as surely be decreased as in any other occupation which becomes more dangerous. If, as seems to be true, the traffic follows the laws of trade, it follows them to destruction as well as to success.

"The European situation offers also an instructive lesson for us. The fundamental reason for the adoption of an international treaty by the nations of Europe was that national legislation alone was found to be ineffective, the traffic following the lines of least resistance. English women could most safely be debauched by transportation to France; French women more safely exported to Belgium and Holland; and Austrian women to other countries. Thus the procurer and pander selected the channels through which they could safely direct their traffic. It is equally true, though not so well realized, that the necessity for the recent national legislation adopted in this country was created because the panders and procurers of our own country exported their ware from one state to another, realizing that this could be done more safely than by debauching and exploiting their victims in one locality."

When the author of this address some years ago was serving as secretary to the mayor of the city of New York, he made a thorough investigation of the white slave traffic in that city, and in a confidential report which was made to him by one who visited forty employment agencies of New York City, it was stated that the managers of these agencies were quite willing to supply girls for immoral purposes. It is significant, however, that they refused to supply girls for the local demand, but that they very willingly entered into interstate business, because they had found that state laws are ineffective to check interstate activity. We need, therefore, not only local executive activity and state laws, but national laws and executive activity as well. The business which is under discussion is interstate commerce as much as dealing in cattle and hardware, and cannot be successfully opposed without interstate as well as state laws. If this is correct, then Congress has a right and should legislate in this matter. It is for this reason that those who have in hand the responsibility of drafting laws for the consideration of our state legislature should compare their proposed laws with those already established in other states, with a view to obtaining such a degree of uniformity as will most successfully lend itself to coöperation among the states, and, furthermore, if Mr. Reynolds' analysis of the situation is correct, and he is not alone in declaring it, right-thinking people should emphasize before Congress the need of appropriate legislation to bring this traffic under interstate commerce laws.

R. H. G.

REVIEWS AND CRITICISMS.

IL DELITTO ANARCHICO: Studio di Diritto Penale. By *Giovanni Carabelli*, Turin, E. Toffaloni, 1910. Pp. 44.

Carabelli, in his "Essay on the Crime of Anarchy," makes a study of anarchy with the object of determining whether it is so entirely of a political nature that it should be treated as a political offense, and, therefore, be non-extraditable. While the object of his study may not affect the interest of American readers immediately it is still of medial interest because of the number of political exiles who come to this country. Apart from this, Carabelli's essay as a scientific study of the subject of anarchy will aid many Americans to a better understanding of a confused element which is but little understood in modern civilization. For while anarchy is an important factor it has not in this country, at least, met with the scientific observation it deserves at the hands of the majority of the bench, the bar, or the laity.

Anarchy is a crime which affects mankind regardless of national boundaries. It is an offense against international society in its broadest sense. Carabelli therefore comes to the conclusion that the privilege of non-extradition should be denied anarchists because anarchical acts are not local and particular. Particularity is the basis of extradition. The history of extradition shows a complete *volteface*. Until 1830 political refugees were sought and recovered from all countries. Often in the Middle Ages if the judiciary and diplomatic branches failed to recover an offender, the military and naval forces were called upon. During the revolutions of the early XIX Century, however, public sentiment underwent a reversal and extradition was allowed only where the crime affected the social and general well-being of mankind. This change of sentiment and law was aided by the difficulty of determining when a political act should be considered criminal. Extradition, of course, could not be allowed and denied at the choice of the country to which the refugee escaped without constant confusion and war. When anarchy appeared as a factor in the life of nations, the privilege of non-extradition was claimed for it on the ground that it was a political offense. This clemency is still given in many countries. Belgium, however, enacted a statute allowing extradition upon an attempt on the life of Napoleon III, but England, Switzerland, and Italy have refused to follow this good example. Those who urge that anarchy should be an extraditable offense are undoubtedly right. The reason for so regarding it is, of course, because of its general effect upon society as a whole regardless of political divisions. While many of the reformers urge this as a reason for extradition, some base it not on the universality of the rights attacked, but on the means and methods employed by anarchists. This is using a bad premise to reach a good conclusion, for on such a premise all political offenses would be extraditable.

The history of anarchy is short, covering but a century. It origi-

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nated in the economic and political revolutions of the XIX Century. It has become a collective name for all the destructive elements in humanity, reaching full development between the years 1890 and 1900. Human society has always been subject to pathological phenomena, each too different from the others to seem to allow of a single underlying cause. The phenomena, however, have all arisen from the same feeling in mankind. The uprising of the Roman plebs and the French Revolution were caused by the same desire. To-day this underlying tendency to change has taken the form of anarchy:—the attempt to overthrow fundamental and basic institutions. It attacks not only the superficial forms, but the actualities upon which they rest. Anarchy is negation. Spencer and Stuart Mill were its precursors in the fields of economics and liberty. All XVIII and XIX Century literature was anti-religious. Nietzsche, and later Ibsen, were destructive of morals. Marx, Proudhon, and Bacunim were the founders of anarchy and welded into one the wandering elements of destruction. Destruction is the teaching of all anarchists, because they desire the overthrow of authority. But even they are forced to acknowledge that one's liberty must be limited by that of one's fellows, and therefore admit a social pact, and even in their destructive furor cannot deny basic moral coercion.

The anarchistic programme is the abolition of all juristic institutions which enforce the social pact. The anarchistic slogan is the destruction of the atavistic present with its institutions which have lost their force. But such a slogan leads inevitably to the total abolition of all restraint. No purely destructive propaganda can live. The anarchist prophesies that in the future through the destruction of all juristic restraint its need will disappear and a Golden Age will come. This we may call theoretic anarchy and disregard because it does not lead to action except in so far as practical anarchists use it to spread and confirm their beliefs. Practical anarchy is no abstract theory, although it relies upon one. It is the destruction by riot and bloodshed of all existing institutions. The acts of anarchists are destructive of political and social security and are, therefore, against the law. The audacity of effort and brazen disregard of punishment have caused jurists and legislators in Europe to study attentively the anarchical phenomena. This study is detailed and scientific. One of the important questions is that of extradition, for the determination of which it is necessary to know whether anarchy is a political or natural offense, and this in turn necessitates the study of political offenses.

Their history may be briefly outlined. Formerly treated with the greatest severity they are now treated with clemency as arising from a noble but misguided patriotism. Carrara goes so far as to deny criminality in any political offense. Many believe, on the other hand, that a man who uses violence against the State or the will of the majority is guilty of an act that is essentially criminal;—that the divine right of revolution disappeared at the birth of the plebiscite. Lombroso thinks that the criminality of the offense lies in its violence and fraud, and holds that a crime is political when and because it is against the public weal. Garofalo, basing the criminality of an offense on the same grounds,

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says that there cannot be any political crimes because all so-called acts are breaches of the peace or good faith and should not, therefore, be distinguished as political because against the State.

The difference of opinion concerning what constitutes a political crime is due to the different philosophic concepts of the right of punishment. The retribution theory looks upon punishment as a duty delegated by God to effect justice, which is always one and the same, regardless of time and place. This theory falls foul of the relativity of political offenses, since in one age an act may be a political crime which in another is a duty. To escape this they based the criminality of a political offense upon the duty of preserving the public safety—a natural right. The State must be defended as the preserver of utility and the natural rights, they say;—but the useful varies while penal laws should be basic. Political offenses, therefore, differ essentially from purely natural offenses. The true criterion lies in the fact that the State is a political necessity for the development of society and individuals. The State, therefore, must punish any attack made upon it. The criminality of such an attack is not absolute but relative. A political offense is an unjustified attack upon the State. The injustice of a political struggle is seen only upon a comprehension of all its features. Its determination, therefore, is difficult. The motive of an act is not sufficient to make a crime political, for murder is a natural crime although committed with a political motive. The kind of right attacked is the true basis, that is, if a political right is attacked the offense is political, but but subsidiary to this criterion we must add the motive, because the offense is not political if the political right is attacked incidentally and the motive prompting the act is not political. A further question arises in the study of political offenses when we consider whether a political offense can become a natural offense by resulting in a breach of natural laws. Take, for example, regicide. If the greater includes the less it might generally be accepted that the crime of murder here is more important than the treason and, therefore, the act is an offense against natural law, but on the other hand it has the earmarks of a political offense,—a political right is attacked with a political motive. Query: Is it just, therefore, to punish a man as a murderer who has had no primary murderous intention?

But leaving the confused subject of the constitution of political offenses it is safe to say that all offenses against the public collective entities are divided into anti-social, anti-natural and political offenses. The political element in the anti-social and anti-natural offenses cannot change their nature. Every political offense is local and particular; in anti-social and anti-natural offenses there is no particularity. These offenses affect mankind in general and for them there should be no extradition. Political offenses are offenses against a particular form of government. Carabelli accepts the above definition and concludes that anarchy cannot be a political crime, because, although it is aimed to destroy the State, the destruction of the State is only incidental to the destruction of society. It lacks the particularity of a political offense. It is a crime against society. It is aimed at civilization, and the bases of human

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society. It lacks everything which marks the political offense and sets it aside for special clemency. He would, therefore, treat the anarchist as a criminal and in no wise as a political offender. In this he seems to be in accord with the best authorities. His essay is a book that gives a clear analysis of present day thought on the subject.

Philadelphia.

JOHN LISLE.

DIRITTO PENALE E SUOI LIMITI NATURALI. By *Ugo Conti*. Reprinted from *Studi Economico-Giuridici* and published under the auspices of the Faculty of Law of the Royal University of Cagliari. Cagliari, Prem. Stab. Tip. Ditta G. Dessi, 1911. Pp. 42.

This brochure by the Professor of Penal Law in the University of Rome is a review of the respective systematizations of criminal law, proposed by three contemporary writers—Bruno Franchi: "Il sistema giuridico della difesa sociale e suoi presupposti storici e antropo-sociologici" (*Scuola Positiva*, March, 1910); Sylvio Longhi; "Repressione e prevenzione nel diritto penale attuale"; and Filippo Grispigni: "Il nuovo diritto criminale negli avamprogetti della Svizzera, Germania ed Austria" (*Scuola Positiva*, May-June, 1911). All three profess to interpret the tendencies exhibited by modern criminal legislation. Franchi and Longhi treat the subject generally, while Grispigni bases his conclusions on the draft penal codes of Switzerland, Austria and Germany. Their arguments in Professor Conti's opinion "imply a readjustment of the old boundaries of the criminal law." The necessity for such a readjustment he fully recognizes, but to the manner of readjustment outlined, he cannot yield assent.

In Franchi's result the domain of criminal law includes crime ("reato") and dangerous criminal tendency ("pericolosità"). This dangerous tendency, as he views it, "arises from the existence, in the perpetrator of a crime, of such anomaly as to produce in him an immanent state of criminality or as to render him a proper subject of care and safeguarding ('cura e tutela'), or may even arise from the existence of mere anomalous conduct in the individual." Both crime and dangerous tendency demand a judicial proceeding—for the former there is a penal judgment ("giudizio penale"), for the latter a judgment of security and safeguarding ("giudizio di sicurezza e tutela"). These proceedings are preferably separate and conducted in different courts. The penal judgment is based upon an investigation of the crime and the criminal. If characteristics of anomaly appear, the case is the subject of inquiry in the second proceeding. The "judgment of security" determines the existence of characteristics of anomaly, and, this established, makes provision for appropriate measures of security. The punishment is proportioned to the quantity and quality of the crime, the measure of security to the quantity and quality of the dangerous tendency.

According to Longhi, the province of criminal law embraces all crimes ("reati") considered as accomplished facts ("fatti avvenuti") or as facts to be feared ("fatti temuti"). Dangerous criminal tendency is therefore crime. But this dangerous tendency is by no means identical with that involved in Franchi's theory. Longhi does not have it depend upon mental incapacity, but derives it from "manifold elements in rela-

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tion to the objective criminal facts." Crime of either character is to be dealt with by a judicial proceeding, from which may result in the one case an adjudication of responsibility ("giudizio di responsabilità"), and in the other an adjudication of dangerous tendency ("giudizio di pericolosità"). The two judgments are "normally cumulative" and the proceedings leading up to them are had before the criminal judge. The "judgment of responsibility" awards punishment, but has place only when the prisoner is capable of understanding and feeling the sanction. The "judgment of dangerous tendency" applies measures of prevention. These may be required in the case of a prisoner with normal mental capacity, either as supplementary to his punishment in case he has been penally convicted, or independently of punishment in case he has been acquitted in the penal proceeding. They may also be required where the prisoner is without normal mental capacity. The test is always the danger of criminal harm which he threatens. The punishment "reaffirms the principle of authority violated by the infraction of the legal command, * * * while the measure of security is an exclusively defensive means of protection."

Grispigni's view is the purely positivist doctrine that the criminal law includes within its boundaries all crime so far as that reveals the criminal personality of the agent. Crime is to be appraised according to the dangerous tendency of the offender. A single judicial organ proportions the quality and quantity of the criminal sanction, and in the concept of criminal sanction are combined both punishment and measures of security. This writer, however, makes allowance for a small class of normal offenders, to whom a true punishment may be applied.

The keynote of Professor Conti's argument is his insistence that punishment and measures of security must be kept apart: the one belongs to the criminal law ("diritto penale") and the other to the administrative law. Still, in his opinion, the operation of administrative law in this regard may properly be included within criminal law in a large sense ("diritto criminale"). With Franchi he has comparatively slight quarrel. His most serious criticism of that author is directed against the latter's conception of dangerous tendency as depending upon anomaly. For one thing dangerous tendency may exist without anomaly. On the other hand, dangerous tendency arising "from mere anomalous conduct of the individual," and dissociated from the fact of a crime, is not within the purview of the criminal law. Longhi is the subject of vigorous attack. His theory is characterized as in substance treating crime in fact as one thing and dangerous criminal tendency as another, yet "by a pretended unity of conception reducing them both to the common denominator of crime." But, as might be expected from Professor Conti's classical leanings, the brunt of the assault falls upon Grispigni. The theory of the last ignores the distinction between repression and prevention and clashes at all points with the author's penal philosophy. Again Grispigni is reproached with inconsistency in that he admits true punishment for normal persons. Moreover, he is accused of flying in the face of express statements in the introduction to the draft German Code and of putting the "helpless German legislator" in the light of "a positivist revolutionary, when in fact he is quite the opposite."

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In the course of the discussion our author takes occasion to renew his opposition to the indeterminate sentence and to reiterate his suggestions regarding "substitutes" for punishment and "complements" of punishment as well as the creation of a penitentiary commission. His views in these respects are explained in the paper prepared by him for the International Prison Congress of Washington, 1910, and have been commented upon by Professor Henderson in a recent number of this journal. (See review of the author's "La Pena ed il sistema penale del Codice Italiano," September, 1911.)

In spite of his differences with the writers under review, it is Professor Conti's opinion that their labors show the possibility of accord between the juridical and positive schools. For his own part he sees in the present tendency of criminal legislation, instead of a state of war between the two schools, a forward movement in which points of agreement are not lacking. But he cannot concede the possibility of any system in which punishment and measures of security are not clearly distinguished.

While disclaiming any intention at the present time of expounding the system which corresponds to his own notions, the author, by way of recapitulation of the argument, gives us a general idea of his conclusions. He believes that criminal law in the wide sense before referred to (that is to say, criminal law proper ["diritto penale"] in combination with the law relating to the execution of the sentence ["diritto criminale penitenziario"] and police regulations ["diritto penale di polizia"]) includes within its scope, crime ("reato") and inherent dangerous tendency ("pericolosità"). It may also extend to dangerous tendency ascertained to exist in relation to a crime due to defect of volition or to defective response of the action to the will. In this larger criminal law repression and prevention find themselves coordinated. In the case of crime there is a judicial proceeding, but in the case of dangerous tendency the proceeding is an administrative one. The two proceedings may, however, be either distinct or united. Furthermore, even in the administrative proceeding, there are various judicial guarantees, "according to the degree of connection between the dangerous tendency and the crime, and the varying intrinsic nature of the tendency." To the crime corresponds the punishment; to the dangerous tendency, measures of security, both of which are executed under the administrative law, but subject to judicial control.

The reader will find the present contribution of interest and value, however much he may dissent from the author's basic views. It is to be hoped that the near future will see fulfillment of Professor Conti's half promise to put into print the complete details of his own system.

Chicago.

ROBERT W. MILLAR.

A GUIDE TO CRIMINAL LAW AND PROCEDURE (8th Ed.). By *Charles Thwaites*. Furnival Press. Geo. Barber. London. Pp. 246.

In the language of the author, whose specialty is preparing students for the bar, "the first edition of this work appeared in January, 1886, its object being to assist articulated clerks and bar students in pre-

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paring for their examinations." It consists of definitions of the requisites of crime in general and of the particular crimes. While the definitions are usually supported by authorities, there is no attempt at complete citation of cases, nor any extended discussion of them. Many of the definitions are statutory and are based on frequent citations of the English statutes. The book is chiefly valuable to English law students preparing for bar examinations, and is apparently well adapted for its professed purpose.

E. A. GILMORE.

University of Wisconsin.

LA LÉGISLATION PÉNALE DE L'ENFANCE ET LES TRIBUNAUX D'ENFANTS EN SUISSE. Par *Leon Lyon-Caen*. Revue pénitentiaire et de Droit pénal, Vol. 35, Number 2, February, 1911. Pp. 242 and 256.

It is encouraging to learn that the most advanced American ideas regarding the treatment of child offenders at the hands of the law, ideas which have, during the last twelve years, found ever fuller expression in state legislation and ever greater justification in the work of the juvenile courts, are embodied most completely and most forcefully in *l'avant projet du Code pénal fédéral suisse* of 1908. The responsibility of the state for the moral training of its children, and the fact that such training is not a matter of punishment but of education, are most fully recognized and set forth therein.

Its tenor is liberal in the extreme. All minors of less than eighteen are declared outside the jurisdiction of the penal law. Criminal terminology is avoided throughout in speaking of their actions, and acts which would be crimes and misdemeanors if committed by adults, are designated simply as prohibited acts.

Two distinct modes of combatting criminality are recognized; one is punishment—in essence expiation, the other is protection—preventive and reformative in character. The first is adapted to individuals who are able to comprehend its meaning and necessity; the second, to individuals who are incapable of understanding and profiting by punishment. Youthful offenders are dealt with entirely by measures falling under the second category—they present a problem, not of repression but of correction, punishment is replaced by protection plus medical and educational treatment.

Minors are divided into three age groups. Those under 14 (children), those between 14 and 18 (adolescents) and those between 18 and 20. The first two groups are treated in practically the same manner, the only difference being in the technique of the preliminary proceedings and in the countenance of more rigorous discipline for the adolescent group.

Action of the court is based upon the nature of the child, not the nature of the offending act. Neither the seriousness of the offense nor the child's power of discrimination enters into the question of the disposition of the case, that depends simply upon what the child *is*, not upon what he *has done*. It is, therefore, incumbent upon the judge to collect all possible data concerning the physical and mental status of the child, his home environment and educational advantages,

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and to complete this picture by a thorough biological and mental examination. As a result of such examination the child will be placed in one of the following categories, to each of which corresponds a distinct and appropriate treatment.

First, children and adolescents morally abandoned, morally perverted or in danger of becoming so.

Second, children and adolescents needing special treatment on account of mental deviation, including the feeble minded, epileptics, degenerates, the partially responsible, deaf mutes, the abnormal, and the retarded.

Third, children and adults, sane and normal.

Children belonging to the first group may be sent to an educational institution, placed in the charge of private families, returned to their own families or entrusted to private charitable associations. Adolescents belonging to the first group may be sent to schools of compulsory education exclusively devoted to such children, or if their moral perversion is too great to be handled in this grade of school, to houses of correction, such institutions to be provided and supported by the state. The time spent in these schools is determined entirely by the needs of the child, the law fixing a minimum and a maximum. For schools of compulsory education, the term must be at least one year and no child can be held longer than the completion of his twentieth year. For houses of correction, the minimum is three, the maximum twelve years. A parole system is allowed, which provides for provisional liberty under supervision. If, during a parole of one year, a youth has not abused his liberty, he is definitely discharged, but still has the privilege of the protection of the school authorities when needed. If, however, his conduct has not been as desired, he forfeits his liberty.

There are nine schools of compulsory education in Switzerland at the present time, but the houses of correction are yet to be established.

Children and adolescents belonging to the second group are placed in institutions where they will receive the proper medical and educational treatment.

Children of the third group are sent to the educational authorities, who are judged to be qualified to decide what treatment will be most effective. They have the choice of reprimanding the child or detaining him in a special school. Adolescents of the third group are either reprimanded by the judge or detained from three days to two months in an establishment absolutely distinct from prisons or almshouses, where he must be kept usefully employed. It will be noticed that the needs of the immoral, perverted and abnormal are well provided for, but very little attention is given to the normal offender. For him two months' detention is the limit of the law, no matter what the offense. M. Léon Lyon-Caen points out that in the case of a sixteen-year-old boy murderer this would be quite inadequate, and suggests that the power be given the court to supplement the two months' detention, when necessary, by a period at a school of compulsory education or house of correction.

In this very complete act, youths between 18 and 20 are also pro-

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vided for. Though these are treated as criminals, their youth entitles them to leniency;—a life sentence is shortened to five years or less and other sentences are equally lightened. Moreover, these youths are not deprived of their civil rights and are, during their minority, kept strictly away from adult prisoners.

The several cantons are vested with the right to create special children's courts and to arrange the methods of procedure for such courts, being instructed, however, that simplicity be adhered to, that the children be kept entirely apart from adults and that the audience be private. It also devolves upon the cantons to provide for suitable officers to watch over the children who are paroled or discharged from the detention schools.

In this legislation the Swiss have outstripped the most liberal rulings of our own country—they have raised the threshold age of criminality from 16 and 17 to 18; they have made no discrimination against the act of murder and they have provided for leniency of sentences for criminals between the ages of 18 and 20. It is surely out of harmony with the ideal of suiting the treatment to the child, not to the act, to discriminate when the most serious crime is committed. It is also out of harmony with this ideal to withhold from the child a fair chance of development in an environment different from the one in which he has committed an act of such gravity. The code would seem to fail in allowing only a two months' detention for a normal child who had reached this point. Its mistake, however, does not lie in its failure to discriminate against murder, as most of our state laws discriminate, but in its failure to provide adequate protective measures for the child murderer. Physical and mental examination, simplicity and privacy of procedure, the effort to re-educate and fit for citizenship (in family life preferably, in institutions when necessary) and absolute separation from adult prisoners are all recognized as necessities.

The only strong feature of our system, an indispensable feature from our point of view, for which the code makes no provision, is probation officers. Probation officers are not as yet a part of the Swiss system. It is, however, required that such data be secured as our probation officers are empowered to collect and some cantons are already proposing our solution of the problem.

The cantons are working out the various problems just as our cities are doing—in two the hearings are strictly private, in one, even the child himself, if less than 19, being excluded from all or part of the proceedings. In one it is proposed to create an "Office of Protection for the Young," composed of a president and four members,—a doctor, a lawyer, an educator and a woman to look after those children who are put on probation by the court.

The opinions of the Swiss in regard to the best system of dealing with the problem vary from the one extreme of preserving the criminal character of the proceedings to the very radical view of M. Kuhn-Kelly who wishes to rule out all vestage of a court and judge and have delinquent children dealt with by a "Commission for the Protection of Youth" entirely independent, not answerable to any other authority.

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The committee would consist of five members,—the president (not necessarily a lawyer), a physician, an educator and two others. The physician and educator would examine the child physically and mentally and the other two members of the commission would collect all data possible to procure about the child. A meeting of the commission would then be held and from the accumulated information, the president, together with the physician and educator, would decide on the disposition to be made of the child.

CLARA H. TOWN.

Lincoln, Ill.

WILLENSCHLIESSUNG UND RECHTSPRAXIS. von *Dr. J. Salgo*, Budapest. Halle a. S. Carl Marhold, 1911.

Of late there has been a tendency to replace the concept of responsibility by the concept of free determination of volition; similarly the term "diminished capacity of responsibility" has been transformed into "diminished freedom of volition for choice." Dr. Salgo shows how little is gained by this transformation, and that the physician is in as bad a plight as before, and is really asked to decide a purely subjective question. In most of the cases in which the issue is especially delicate the decision is no longer a medical issue. With regard to the diminished freedom of choice he points out that that is tantamount with a negation of insanity and with an admission of culpability. It is obvious that in these points the same difficulty exists in Europe as with us, and that we have to learn to put the question in a form better adapted to the fact that although the law recognizes only the alternatives of guilty or not guilty we have in reality many degrees of guilt, and that outside of guilt we must also consider the rights of society to be protected against mere *liability* to crime. Salgo, therefore, pleads in favor of a serious consideration of the elimination of anti-social or asocial individuals from society. He justly points out the wild and profuse talk about personal liberty as not specially relevant since we learn more and more how much stronger the individual constitution, habits, and impulses are than the actual free determination and choice between right and wrong. If error should occur they would be as open to correction as the occasional errors of justice on other foundation which are taken with much greater equanimity and without the howl usually raised where individual freedom is put under control on account of incapacity of conduct.

Johns Hopkins University.

ADOLF MEYER.

DER GEISTESKRANKE, UND DAS GESETZ IN OSTERREICH. von *Dr. Heinrich Obersteiner*. Halle a. S. Carl Marhold, 1911 (pp. 23 to 42).

The Austrian authorities are working out new laws with regard to guardianship, the care of the insane, and the criminal code. Obersteiner, therefore, reviews the discussion of the Association of Austrian Alienists in 1907 and 1908, and the recent discussions of the Vienna Society. Laws must have an element of growth, which is determined partly by the claims of the public and the claims of the specialists. The fear of the asylum is at the bottom of most regulations. The law of

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1874 requires that the certificate not only of a practitioner but of the health officer he obtained, and that the physician in charge of the institution has to notify the court within 24 hours. It soon became obvious that the possibility of a provisional admission to a hospital was necessary to avoid delays. All this circumstantial procedure is the product of mere agitation of propagandists for fear of the so-called "railroading," and it is certainly interesting that not one case of prosecution concerning unjust commitment is on record in Austria, but, on the other hand, frequent accounts in the papers of crimes due to nothing but the great difficulty of getting patients to a hospital before they have committed murder or similar acts. The new proposals make special provisions for insane or alcoholic individuals who have committed an act liable to more than six months incarceration, but not prosecuted on account of insanity. These persons can now be sent to an institution for as long as they remain dangerous. The same holds for persons who have been found guilty of a similar crime, but are considered deficient in the realization of the wrong of the act or in the control of their will, and to have shown a reduction of responsibility. To make such measures possible special institutions either as annexes for the criminals connected with institutions for the insane or annexes for the insane connected with the prisons or independent institutions would be required.

The law with regard to the relation of insanity to crime is now formulated as follows:

Paragraph 3: Not punishable is whoever at the time of the act did not on account of mental disorder, mental defect, or disturbed consciousness possess the faculty to realize the wrong of the act or to determine his will in keeping with this realization.

Paragraph 4: If the capacity of the culprit to realize the wrong or to determine his will in keeping with this realization is diminished at the time of the act owing to protracted morbid condition, death penalty is to be converted into a life sentence. If the accused is liable to a term in prison which would aggravate his condition if carried through in the usual manner, the Court may order that the punishment shall be executed in keeping with the peculiarities of the person.

These punishments shall be carried out in special institutions or in a special division of the prison or jail.

Paragraph 57 adds: If the culprit acts in a condition approaching irresponsibility with regard to reduction or weakness of the capacity to realize the wrong of his act or to determine his volition in keeping with this insight as far at least as his condition has not been produced by responsible drunkenness prison sentence may be transformed into a sentence to jail; fixed terms of detention and fines may be reduced to one-half of the law limit.

This condition evidently tries to do away with the easy dismissal of such cases as "not guilty."

The new proposal does, however, include some regulations less desirable—for instance, the procedure is very complicated; and one expert who need not even be an experienced alienist is accepted as sufficient. Moreover the law allows the accused, who is supposed not to be cap-

able of determining his volition,' to choose confidential experts with an unlimited array of rights and no responsibility, beside that of the professional secret! Moreover the law provides the admission of justice of the peace and lay judges in the constitution of the senate deciding on guardianship, a step which seems to be a premium on lack of experience. Special provisions are made against alcoholism and morphinism.

Obersteiner further suggests that the Austrian practice of demanding an expert report from the university faculties ought to include some provision for remuneration for those who are doing the work..

The above proposals have many points which are improvements on the German proposals. It does however seem deplorable that the bugaboo of railroading still puts unnecessary difficulties in the way of prompt removal to a hospital which had best be kept under control by clearly fixing the responsibility and providing safeguards for the exceptional patients who want to object on the ground that it is infinitely rarer that a person is taken to a hospital without cause and without benefit to him than that an innocent person is put under arrest and even under trial. A campaign of popular education and the request to the legal profession to judge of this matter on ground of facts and not on ground of imagination would be well in order in this country as well as abroad.

Johns Hopkins University.

ADOLF MEYER.

DIE NORDAMERIKANISCHEN GESETZE GEGEN DIE VERERBUNG VON VERBRECHEN UND GEISTESSTORUNG UND DEREN ANWENDUNG. *Dr. Hans W. Maier*, Zürich-Burghölzli, Juristisch-psychiatrische Grenzfragen, VIII. Band, Heft 1/3. pp. 1-24.

Maier reports on the data collected by the Swiss Minister to the United States in 1909. The approval of the preliminary report by the members of the medico-legal association at Zurich, November, 1910, led to the fuller publication of this official material. After reference to the family "Zero" and to "the Jukes" and to the fact that improvement of the *care* of the defectives has already led to an addition of 56,000 years of state care for the 7,000 dependents in Indiana with its 2,500,000 inhabitants, Maier passes to the law limiting the right to marry. In this respect European laws give the applicant the benefit of doubt and exclude only extreme cases of defect. The Connecticut law of 1895 (epilepsy and imbecility), the Michigan law (insanity, idiocy, syphilis and gonorrhoea), the Ohio law of 1904 (alcoholism, epilepsy, imbecility and insanity), the Kansas law of 1903 (for epilepsy, imbecility and insanity, leaving out women above 45), the New Jersey law of 1904, and that of Minnesota, all demand not the demonstration of the disease but a clean bill of health. Maier favors especially the Michigan law. California is the only state with a statute introducing castration as such for imbeciles or prisoners; but the Attorney General U. S. Webb interpreted it in favor of the Indiana law which demands merely sterilization.

The experience of Dr. Sharpe with vasectomy led to the Indiana statute of 1907 making mandatory the appointment of a commission of experts consisting of the physician in chief of the institution and two experienced surgeons and sterilization of irrecoverable criminals,

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idiots and demented, with a maximum fee of three dollars for the operation. Up to July 31st, 1911, 873 male criminals, and at least two women, have been sterilized. Of the ensuing discussion Maier has seen but favorable accounts and he assumes that the general introduction of the principle is but a question of time. Oregon added hereditary forms of insanity and specifies criminals convicted for the third time. The Governor vetoed it with merely formal arguments. Illinois refused the proposed law; Connecticut in turn enacted a law specifically for the state prison and for the two state institutions for the insane. The law demands a study of the heredity and specifies the operations (as vasectomy and oophorectomy), and prohibits the operation for general use for any but unconditioned medical reasons.

In the main the report errs in assuming that these laws are really rigidly enforced.

Johns Hopkins University.

ADOLF MEYER.

LA POLICE DES MOEURS DEVANT LA COMMISSION EXTRAPARLEMENTAIRE DU REGIMÉ DES MOEURS. Par Louis Fiaux. Tome III. Paris, 1910. Pp. 744.

The present volume is the latest in a series of works by M. Fiaux on the system of police regulation of prostitution. In 1888, he published *La police des Mœurs en France et dans les principaux pays de l'Europe*. In 1902 he issued the first volume of a *Histoire Generale du mouvement pour l'abolition de la Police des Mœurs*; and in 1909 issued the second volume of this work. In 1907 appeared two volumes containing the proceedings and documents of the commission established in 1903 to investigate the system; while the volume now before us contains the Report of the Commission with the draft of a bill recommended by it, and a discussion of 224 pages by M. Fiaux, who was a member of the Commission.

The Commission was appointed as the result of a discussion in Parliament on abuses by the Police des Mœurs at Paris and Rennes; and its report gives the result of an exhaustive investigation into the prophylaxis of venereal diseases and the means for protecting public morality. The general conclusion of the report is that the system of regulation does not reduce the morbidity from venereal diseases. The legislation recommended by the Commission proposes to do away with the system of regulation, and to provide measures for the protection and reformation of minors engaged in prostitution, preventing public provocation to debauchery, to suppress pandering and to provide medical treatment for venereal diseases.

M. Fiaux's introductory discussion, while criticising the report in some details, in the main supports its conclusions and recommendations, denounces strongly the abuses of the system of regulation and urges its abandonment.

This exhaustive investigation and report is an indication of the serious attention being given to the problems of prostitution, and is well worth examination by all interested in the efforts being made in this country to deal with the social evil on a rational and scientific basis.

University of Illinois.

JOHN A. FAIRLIE.

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JUDICIAL STATISTICS, England and Wales, 1909. Part I.—Criminal Statistics. Darling and Sons, London, 1911. Pp. 195.

One can best begin a review of this volume, it seems to me, by giving in full its second sub-title, which is "Statistics Relating to Criminal Proceedings, Police, Coroners, Prisons, Reformatory and Industrial Schools, and Criminal Lunatics, for the year 1909." Even this sub-title does not tell the whole story. The book includes not only these statistics for the year 1909, but also a written introduction to the statistics and tables in which comparisons are made with the criminal proceedings of previous years.

The introduction was prepared by Mr. H. B. Simpson of the Home Office; and it is carefully pointed out in the letter of transmittal that the suggestions and conclusions which he makes must not be taken as the official views of the Department.

Mr. Simpson's most important conclusion is that there has been a steady increase in criminality during the last ten years. In regard to his position I can do no better than quote his own words.

"It is no doubt probable that an increase or decrease of crime in a single year as compared with the preceding year may be in part attributable to industrial causes and the condition of the country generally, but it would, I think, be impossible to obtain any series of figures bearing on the general condition of the country that would at all coincide with the remarkable series of figures relating to crime which is now under consideration. These point to a steady increase of criminality during the last ten years which is more marked than at any previous period for which similar statistics are available. It is impossible to avoid the conclusion that during these years some cause favorable to crime has been regularly at work which before then either did not exist at all or did not exercise sufficient influence to affect the figures."

It is interesting to know to what he attributes this increase. He says that judging from statistics furnished by the police relating to habitual criminals at large that it is not due to an increase in the number of this class and is explainable therefore only on the ground of a more general prevalence of criminality in the community as a whole. This growing prevalence he in turn accounts for by reference to the compassion and pity which have lately been lavished upon the criminal. At times, he says, it seems as though the reading public was ready to accept anything which the criminal might say to impugn the administration of justice. This is, he feels, a false attitude which has come about through the mistaken notion that crimes are simply the revolt of the poor against the rich and that criminals are the romantic characters which are portrayed in present-day fiction. As a matter of fact, it is not the so-called "property class" that suffers most from the acts of criminals but ill-paid clerks and working men and women, and the criminal is simply a man very much like the rest of the world and very greatly influenced by the attitude which the community adopts toward him.

Two other points of interest discussed in the introduction are the decrease in offenses for mere violence and the increase in the percentage

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of persons imprisoned in default of the payment of a fine. This last situation is hard to explain, since the new offenses created by recent legislation are those which would be committed by well-to-do persons. The only explanation which he suggests is that prison is losing its former terror.

From the prison returns, one can gain a fairly good idea of the importance of the short sentence. Of the 221,199 persons received in prison during the year 1909, 152,869 were under sentence of less than six weeks' duration.

It may not be out of place here to note that Mr. Simpson bases his conclusions in almost all cases on the figures for persons tried for offenses or on offenses dealt with by the courts rather than on the number of persons actually convicted of crimes. This seems to me to be a mistake and a practice not in accord with the best theory.

One misses, I may add, the careful and detailed analysis of the statistics which one is accustomed to find in American statistical reports. The tables can be made to yield a vast amount of useful and suggestive information, but the student will have to do the necessary grouping and summarizing himself.

LOUIS N. ROBINSON.

Swarthmore College.

THE PREVENTION OF DESTITUTION. By *Sidney and Beatrice Webb*. Longmans, Green and Co., 1911. Pp. 348.

The interest of students of criminology in this essay on poor relief lies in its constructive program of prevention. It is very difficult, spite of our proverbs about the "ounce of prevention," to secure sustained attention for it. The dear public pays millions for patent pills and physicians' fees, but neglects the causes of disease until it is too late. For ages men of all classes, even statesmen, have indulged an unwarranted confidence in fear of penalties as a deterrent factor, against which psychologists and educators have protested in vain. The pauperized spirit is akin to the vicious and criminal mind and both arise in the same family conditions. Radical measures are necessary to avert these connected evils; the prevention of disease, the eugenic selection of better stock, the supervision and control not only of children but especially of adolescents, the abolition of sweating and unemployment, and the adoption of a social policy which will at once raise the standard of living in the urban quarters where crime impulses flourish as in a hot bed. Malaria is mitigated by quinine, but leaves weakness, malaria disappears when drainage is perfected. Punishment is quinine; a constructive social policy destroys the germs. When the entire population is trained to regard law merely as threat and repression, it tends to lawlessness; when law means a constant and positive method of promoting health and happiness, lawlessness diminishes, loyalty increases. The book here noticed has awakened severe criticism: its conclusions are yet to be tested by reason and experiment; but much of the plan is already on a sound basis and all of it deserves sober consideration.

University of Chicago.

C. R. HENDERSON.

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DIE JUGENDLICHEN VERBRECHER IM GEGENWAERTIGEN UND ZUKUNFTIGEN STRAFRECHT. By *Prof. Dr. Ernst Schultze*, Direktor der Kgl. Psychiatrischen und Nervenlinik in Greifswald. Wiesbaden, Verlag von J. F. Bergmann, 1910. Pp. 74.

The author approaches the problem of juvenile delinquency from the experience of a specialist in diseases of the nervous system. He analyzes the older code and the proposed legislation with direct purpose to deal with the offender in full view of his character and history, leaving legal precedents to lawyers. It has been claimed by certain antagonists of the reform party that lawyers have nothing to learn from medical men, and there is general complaint among physicians, teachers and practical prison men in Germany that jurists treat them with scant courtesy. The argument of this pamphlet is that codes and procedure must stand or fall by the test of efficiency, and that this test can be applied not only in courts but in institutions and clinics, and in city life. The cure for meaningless legal phrases is the honest attempt to study objectively, with all the appliances of modern science, the personal characteristics of offenders. It is true the author is writing only of youth, but the principle is applicable everywhere. On the whole the Bourbons are compelled to yield ground, the new projects of law and the rapid development of juvenile courts in Germany are cheering signs of the dawn of light. Not only men of different professions but also women are coming to be partners of judges in this movement, and their co-operation is creditable not only to themselves but also to those jurists who have encouraged it for the sake of their country's welfare. It means a fresh life, a renaissance for legal science.

University of Chicago.

C. R. HENDERSON.

MISDAAD IN SOCIALISM; TEGELIJK EENE BIJDRAGE TOT DE STUDIE DER CRIMINALITEIT IN NEDERLAND. By *Dr. W. A. Bongers*. Amsterdam, 1911. Pp. 40.

This essay originated as a refutation of some recent assertions by a well-known Netherlands jurist, Dr. J. Slingenberg, judge of the municipal court in Amsterdam, and developed into general study of recent Dutch criminality from the statistical point of view. Judge Slingenberg, in a report made to the Congress of Criminal Anthropology, advanced this charge: "There is a direct relation between criminality and class-conflicts, in the sense that the sharper the conflict the greater the increase of crime." The first and chief proof offered for this was that in the Netherlands the years 1897-1901, in which general elections were held (the Socialists being a principal party), there was an upward jump in the crime figures. Of this broad assertion and its supposed basis, Dr. Bongers easily makes short work. By a series of tables he demonstrated the absurdity of the generalization. He then proceeds to an elaborate study of recent Dutch criminal statistics, from the point of view of economic and social causes, and with great skill points out the impossibility of deducing fixed and uniform explanations and the danger and fallacy of certain *a priori* assumptions.

This essay exhibits Dr. Bongers as an able master in the statistical

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study of crime and its causes—that tempting field into which so many venture rashly. Dr. Bonger's great work, "Crime and Economic Conditions," is now under translation in the Modern Criminal Science Series, published under the auspices of the Institute. The American public will welcome this much-needed volume, the only one in English which systematically examines the crime problem from that point of view.

Northwestern University.

J. H. WIGMORE.

MENTAL MECHANISMS. By *William A. White*, M. D. *Nervous and Mental Disease Monograph, Series No. 8.* Pp. 171.

The above monograph of 150 pages is a most interesting contribution to the literature of applied psychology. Assuming a structuralism, a subconscious mind as filling "between the mountain peaks," any inquiry into the accuracy of the representation is relegated with forceful authority to the realm of metaphysics, which is taboo. The plan of the monograph involves the portrayal of analogy between ideas or constellations,—sometimes conscious, sometimes subconscious,—and the wheels of a mechanism; and this portrayal, from the literary standpoint is excellently and vividly drawn.

The final chapter makes certain representations, which coming from so eminent an authority should certainly find audience among those interested in the relations of the insane to the state. This chapter is an elaboration of a paper read before the American Public Health Association in Milwaukee and has previously been published in briefer form. Mentioning the relation of venereal diseases, and of alcohol to insanity the author passes on to certain common experiences which have in the past received less than their due attention as causative factors in the psychoses of various forms of insanity. The failure of the individual to live down the griefs, the shocks, bad habits, and low ideals, develops a biased mental attitude. These attitudes develop in two familiar sorts of environment,—the school room and the home. In the home, sickness, alcoholism, crime, child labor, outside employment and overwork of the mother, remove from the unfoldment of the child nature one of the most important and most necessary restraining influences. The energy which should have been expended by the mother upon the rearing and careful training of the child is deflected to other ends. The European laws governing the employment of women are commended.

Regarding sterilization of criminals, Dr. White says, "It is hard to find any justification for such legislation unless it be the good intention back of it, and we all know the fate of so many good intentions. * * * The whole question of heredity is altogether too vague in its application to man to warrant any such radical measures." Insanity is an acquirement. The symptoms have been added to the germ, not developed as an innate necessity. "If a change in environment will change the shape of the skull in one generation, as has been recently shown by Professor Boas, what may we not expect from hygienic surroundings and proper educational methods?" A method of education which will correct bad habits, which will foster good habits, which "will develop the best which is within the individual, but more important still, which will develop a

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properly balanced structure that will not be forced out of equilibrium by the first breath of opposition," is the great preventive principle. "Many of the psychoses that later go to the making of classes of chronic insane, criminals, paupers, prostitutes, tramps and ne'er-do-wells * * * have their incipency in the school room * * * and develop very often under the very eyes of the teachers." These psychoses are preventable, and the failure to observe them is due to the lack of preparation of teachers, mothers and physicians. A paragraph is devoted to the lack of training of physicians. * * * "Medical courses are open to somewhat the same criticism as the miser." Attention is called to a law passed by the New York Legislature which takes out of the hands of the poor authorities the care of the insane previous to commitment and putting it into the hands of the health officer. The practical things which may be done in any community are summed up in seven recommendations:

1. Legislation placing the responsibility for care of the insane previous to commitment in the local health office.
2. A psychopathic ward in every municipal hospital of cities of 100,000 inhabitants. This ward should have an out-patient department.
3. An after-care society for the assistance of persons discharged from the hospital.
4. Legislation for the control of labor of women and children.
5. Popular education regarding insanity and its causes, from the hospital as a center. Its officers should give series of popular lectures to the members of the surrounding community.
6. Field work from the hospital into the centers where insanity has developed and to co-operate with the after-care society.
7. More liberal support by city and state of scientific research work especially along the lines of etiology and prophylaxis.

This chapter is to be considered as the application of previous discussions regarding the causes of and the process of development of the psychoses. The rapidly increasing population of the insane hospitals demands more widespread and careful study of the contribution of the everyday, routine habits to the upbuilding of the mental complexes, and this monograph is designed partly to stimulate, partly to satisfy this demand.

University of Illinois.

A. H. SUTHERLAND.

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¹May, 1911, to March, 1912.

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Managing Editor, ROBERT H. GAULT

Assistant Professor of Psychology, Northwestern University.

Managing Director, FREDERIC B. CROSSLEY

Librarian of the Elbert H. Gary Collection of Criminal Law and Criminology, Northwestern University.

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Richard A. Sylvester, Chief of Police, Washington, D. C., President of the International Police Association.

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Chester G. Vernier, Professor of Law, University of Illinois.

Gay Montrose Whipple, Professor of Psychology, Cornell University.

John H. Wigmore, Dean of the Northwestern University Law School, Chicago.

Elmer A. Wilcox, Professor of Law, University of Iowa.

John B. Winslow, Chief Justice of the Supreme Court of Wisconsin; President of the American Institute of Criminal Law and Criminology.

Communications relating to contributions and books for review should be addressed to the Managing Editor, Evanston, Ill.

Subscriptions and business correspondence should be addressed to the Managing Director, Northwestern University Building, 31 W. Lake Street, Chicago, Ill.

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CONTRIBUTORS TO THIS NUMBER

William N. Gemmill was born on a farm near Shannon, Illinois. In 1881 he entered Cornell College in Mount Vernon, Iowa, and graduated from that institution in 1886. During the next four years he was superintendent of the city schools of Rockford, Iowa, and the following year superintendent of the city schools of Marion, Iowa. In 1892 he entered the Northwestern University Law School and graduated and was admitted to the bar the same year. He continued the practice of law in Chicago from that time until 1906, when he was elected a Judge of the Municipal Court of Chicago for the term of six years. He is a member of the Hamilton Club, a life member of the Press Club, and a member of various other civic organizations in Chicago. A trustee of the McCabe Memorial Methodist Church, and a Mason. At the present time he is chairman of the Committee on Criminal Procedure of the American Institute of Criminal Law and Criminology.

Bernard Glueck, Assistant Physician in the Government Hospital for the Insane at Washington, D. C., received his preliminary education in Europe and in America. He attended the Milwaukee University School, and later took up the study of medicine, and graduated from the Medical Department of Georgetown University in 1909. Since that time he has taken a special course in Psychiatry at the Psychic Clinic of the University of Munich. Since October, 1909, he has been on the staff of the Government Hospital for the Insane, and for about a year there has had charge of the Criminal Department of that institution.

Robert Ferrari was born in New York City. Member of the New York City bar. Educated in the public schools of that city, in the College of the City of New York, and in Columbia College, from which he received the B. A. degree. He spent one year in post-graduate studies at Columbia University and received the degree of M. A. He taught school for two years. Afterwards he studied law at the Columbia University School of Law, and was graduated. He has been for three years a lecturer in Italian on Government for the Lecture Bureau of the Board of Education of New York City. He is also a writer on matters that concern the Italians in America, and was one of the founders of the only Italian Branch of the Y. M. C. A. in the world outside of Italy. He is a teacher of literature, debating and public speaking in the Y. M. C. A. He has contributed legal articles to Nelson's Encyclopedia.

Louis N. Robinson, A. B. Swarthmore College, 1905; Ph. D., Cornell University, 1911; Graduate student, Cornell University, 1905-1906; Joshua Lippincott Traveling Fellow of Swarthmore College; Universities of Halle and Berlin, 1906-1907; Fellow in Economics and Statistics, Cornell University, 1907-1908; Instructor in Economics, Swarthmore College, 1908-1910; Assistant Professor, from 1910. Author of "History and Organization of Criminal Statistics in the United States," published in the Hart, Shaffner and Marx series by Houghton, Mifflin & Co.

Chester G. Vernier, Professor of Law, University of Illinois; A. B., Butler College, 1903; one year graduate study University of Chicago on scholarship; J. D. (cum laude) University of Chicago Law School, 1907; Instructor in Law Indiana University, 1907-8; Professor of Law, University of Nebraska, 1908-9; Professor of Law Indiana University, 1909-11; taught in University of Chicago Law School, spring and summer of 1911; Professor of Law, University of Illinois, 1911; Secretary Illinois State Society of the American Institute of Criminal Law and Criminology and Associate Editor of the JOURNAL.

EDITORIALS.

THE LAWYER'S OPPORTUNITY.

The lawyer of the twentieth century must necessarily be a very different man from the lawyer of the nineteenth century, just as the lawyer of the nineteenth century was a different man from the lawyer of the eighteenth century. He must face new conditions, solve very different problems, and advise clients whose troubles are not the old troubles, but new ones arising from new conditions and the operation of novel and experimental laws designed to readjust social, civic and business relations in accordance with changed conditions and changed ideas of human duty and responsibility.

He can not maintain the prestige and influence which the profession has always enjoyed if he stands with his face to the past, and deprecates all changes as changes for the worse. The man who is forever talking about "the good old times" and deprecating the woeful degeneracy of the present day *may possibly* be a Jeremiah sent from God to rebuke a recreant race, but he is more likely to be the false prophet of an equally false god.

"As it was in the beginning, is now, and ever shall be, world without end" is doubtless true with regard to the majestic sweep of the universe through infinite space, but it is certainly not true as applied to the affairs of men.

We can not stand still even if we would; the astounding discovery of today becomes the familiar fact of tomorrow, and the archaic curiosity of the day following. With the accumulation of human knowledge there comes an ever increasing rapidity of change in economic, legal and governmental conditions, and to attempt to meet the changed conditions by blindly applying the economic and governmental theories of a preceding century, without change or adaptation, is to attempt to put modern civilization in a medieval straight jacket.

Among the changes which marked the closing years of the nineteenth century and which still more distinctly mark the opening years of the twentieth century, there is none more noticeable than the marked change of attitude on the part of the public toward the problems connected with the administration of the laws by the courts and the bar.

A LAWYER'S OPPORTUNITY

It is not many years since the great mass of the people seemed to regard the administration of the law as an occult science, whose defects and shortcomings, however lamentable, must be regarded as necessary and unavoidable evils, which for some unknown but entirely sufficient reason must forever exist and be endured.

True, some decision of great public interest, like the Dred Scott decision, might at times challenge public attention and arouse a storm of indignation, as well as a demand for a change in the court which made it, but as to the great mass of cases the ordinary attitude of the people was that of entire helplessness, or rather of submission to the inevitable. If the courts and the lawyers said that such was the law, it was accepted, if not with pleasure, at least with resignation, and with the reflection that there must be some good reason, which the judges and lawyers in their inscrutable wisdom knew but would not divulge, why the law must work injustice. There was little or no inclination to seek a remedy and apparently little thought that any remedy was possible. Were there long delays which amounted to a denial of justice? Did the law miscarry and become an instrument of oppression? Did the red-handed criminal go unwhipped of justice? Even so, these were but necessary minor defects which must always exist; and, forsooth, was not the English legal system as revised and improved on this western continent the best system which the world had seen? Perish the thought that anything was the matter with it; to argue seriously that it or its administration was defective was the nearest approach to the heinous crime of *lese majesty* known on this side of the broad Atlantic. Like the epidemics of cholera, the diseases of childhood, or the ubiquitous housefly, these apparent evils all were thought to have their appointed place in the economy of nature, and to carry out some certain but well concealed purpose of the Great Creator.

This supine and very edifying folding of the hands in meek submission to the supposed supreme will no longer prevails. There has arisen instead a great body of skeptics and faultfinders. They are strangely averse to accepting without question the dictum that all these are necessary evils. They fairly bristle with questions: "Why is it necessary that there should be epidemics of cholera or yellow fever? Why must a child have the so-called infantile diseases and incur the risk of lifelong impairment of intellectual or bodily powers, or both? Why must the housefly or the equally detestable mosquito be endured? And above all, why may not justice be had without

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denial or delay, as promised on the plains of Runnymede nearly seven hundred years ago?"

To these active and earnest souls the stereotyped answer that these minor evils are inevitable and should be accepted with pious resignation as chastenings from the hand of an allwise Providence is no answer at all. They utterly decline to subscribe to any such confession of human impotence. With admirable courage, if not always with entire wisdom, they are attacking the defects and imperfections in the administration of the law, and they do not propose to wait for the action of the bench and bar. If bench and bar choose to aid, their assistance will doubtless be welcome, but if it be lacking the movement will not wait on that account, but it will go forward with greater speed and less discretion, for its leaders will be radicals and doctrinaires who have not experienced the practical difficulties which are always in the way of such reform.

Will the bench and bar appreciate the greatness of the opportunity and give wise, sympathetic, and constructive aid to the great movements now in progress to simplify court procedure, to eliminate technical pitfalls from the path of the litigant, to humanize the administration of the criminal law, and to mold legal and economic conditions so that individual effort may have its due reward, and at the same time that life shall have its message of brightness and hope for all?

I hope so and I believe so; in no other way can the legal profession maintain the prestige of the past, in no other way can it maintain its place among the foremost of the great professions of the world.

JOHN B. WINSLOW.

RACE IMPROVEMENT THROUGH SOCIAL INHERITANCE.

In the last issue of this journal under the title, "Race Improvement," the writer briefly discussed a bit of evidence from which one may possibly infer improvement of the racial stock as a result of individual acquisitions gained through contact with the environment. In that connection the factor of social inheritance, which makes each successive generation heir to whatever improvement in the environment its predecessors may have effected, was referred to incidentally. Where they have uprooted vicious influences, or strengthened social defenses, or positively supplied new agencies that offer new opportunities, there the succeeding generation comes upon the scene with an advantage. This may appear, from one point of view, to be in the nature of a superficial treatment of symptoms. Undoubtedly, however, it is from

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this source that we are justified in expecting the greater impetus toward the improvement of the race, whether or not it is accomplished by means of modifications in the stock. And it is not superficial. On the contrary it goes directly to the problem of providing for the most complete possible development of each individual who enters into and hence helps to create the social environment.

This puts the provision for social inheritance upon a fundamental basis. To secure such inheritance is one function of the education of the individual. The process of education comes within the limits of psychology. The question, therefore, may be conceived from a psychological angle. It is a matter of selecting, arranging, and applying the stimuli or environmental influences in such manner that the way may be opened or the occasion provided for those mental attitudes or those forms of behavior that by common, tacit agreement should be perpetuated. Like every other educational activity it is a psychological experiment or demonstration on a broad scale.

This conception is the ground-work of an illuminating article in the April issue of the *Yale Review* by Havelock Ellis on "The New Social Hygiene," and also of a little volume by C. W. Saleeby on "The Method of Race-Regeneration." This volume is in the "New Tracts for the Times" series published by Moffat, Yard & Company. Legislation alone on questions of eugenics goes wide of the mark. Its effect is negative at best. It may keep undesirable influences in the background and thus prevent the contamination of an individual's environment. But the effectiveness with which it can accomplish this negative good and its efficiency as a positive force as well depends upon its administration, and hence upon the mental attitude and the habitual behavior (products of the process of education) of the citizens of the community. The State of Illinois, by the way, has a statute which provides for compulsory education up to the age of sixteen years in the case of youths who are unemployed at the normal age for completion of the elementary school course. Notwithstanding this law, there are nearly 25,000 unemployed children between the ages of fourteen and sixteen who are idling their time and breeding crime in the streets of Chicago. This is only one of a hundred facts that might be selected to support the proposition that the education of the individuals who compose a community must be secured before any other agencies for the improvement of the race can be effective. Public sentiment alone can make legislation for eugenics or any other purpose worth while. No law or mutual agreement that requires health certificates as a prerequisite to marriage can, unaided, go far in

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the production of a more substantial race unless the individuals to whom the law or agreement is to be applied are educated to the point of supporting it loyally. Without enlightened public support such attempted regulation may easily stimulate evasion of the law and deterioration of morals among those men and women to whom health certificates are denied. This would be a sorry result of a praiseworthy effort.

In the interest of race improvement or regeneration, therefore, we must look primarily to the education of the individual; to education that emphasizes not only the value, but the necessity of social co-operation in every movement that makes effectively for the development of those vigorous, adaptable individuals who are to make the social environment for tomorrow. Until the individual men and women in our cities shall have learned strictly to co-operate among themselves and with institutional agencies to enforce the laws that are designed to protect the youth against the vicious atmosphere of the street and to provide positive stimuli for health of body and mind: until that ideal shall have been realized we shall have to be contented with slow and uncertain progress toward race regeneration through social inheritance.

ROBERT H. GAULT.

A WIDESPREAD FORM OF USURY: THE "LOAN SHARK."

By the laity, and pretty generally by lawyers as well, usury as a crime or as a civil injury is looked upon as a matter of historical or literary interest, but its widespread and destructive influence is not generally recognized. In most minds usury is connected with "The Merchant of Venice," and it is generally thought that Shakespeare was caricaturing a vice somewhat antiquated even in his day. This, however, is not so; it flourishes in our great cities and on the continent today with as much, if not greater, destructive force than ever before. In our country, the "loan sharks" are a form of this socially destructive force which should be practically attacked. They have no monopoly, but they are peculiarly offensive in that they fatten upon the small wages of the proletarian. They, therefore, are peculiarly vicious from an individualistic standpoint in that their victims are deprived the necessities of life. In the case of a young man he is prevented from attaining the financial growth of which he would otherwise have been capable, and in the case of an old man his wife and children are made to pay the costs of his victimization. From a social standpoint, "loan sharks" are peculiarly vicious because

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they attack that class which is on the borderland between financial success and stability and poverty and instability. That the effect upon society is a large impoverished class with consequently criminal tendencies, needs no proof.

But before taking up the special case of the "loan sharks," it is well to review very briefly the question of interest. Miraglia writes in his book, "Comparative Legal Philosophy" (1): "Interest is profit gained by renting capital. It has been regarded from a biased point of view, and has been held in ill repute from moral and religious prejudices." In other words, the Christian precepts and the mistaken Aristotelian doctrine prevented for a long time a recognition of the legitimacy of interest. But interest should be recognized. Money is economically productive and interest is therefore undeniable. Money is a merchandise, and rent should be paid for its use. Usury exists where the rental is too great, economically. "Usury consists of a debt without a corresponding loan." In the determination of usury, consideration should be given to the value of money as merchandise at that time and of the risk; the risk, of course, being determined by the financial liability of the borrower. From this brief statement of the case it at once clearly appears that usury determined by a maximum of legal interest is philosophically and juridically wrong. In fact, we may add that it has been abrogated in the countries more advanced in juristics. This does not mean, however, that there is no such crime or civil injury as usury.

Stein, in his book on usury, points out that it is of two kinds: simple and seductive. In other words he holds that a contraction of a debt without a corresponding loan, the charging of an excessive rate of interest is simple usury and no crime; whereas usury consisting of a scheme by which a creditor deceives his debtor and repeatedly increases the amount of the debt by use of threats, blackmail, or inducements affecting the hope of repayment, is seductive and a crime. This distinction has been doubted, its opponents alleging that simple usury is practically non-existent, and that all usurers fall sooner or later into the commission of fraud. We are not interested here, however, with the distinction of the two usuries, or even with the question as to the distinction of their criminality.

Usury, of course, can be stopped. It is a question of price. Publicity seems the fairest and surest method to do away with it with the least effect upon financial credit. The law of the maximum, as

(1) Boston, 1912; page 598.

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can be seen from the outline of interest which we have given, is apparently illogical, and if enforced would destroy many large businesses where the risk involved is so great as to prevent their serious consideration as a six per centum investment. Only complete and absolute publicity can prevent usury, and this of course affects to a certain extent the economic equilibrium, but with our increasing sense of justities and the increasing feeling of the unity of society, the time may come when publicity may be adopted. Should such a system be effected and the price paid for money accurately known, competition would soon result in the destruction of usury.

But to come to our particular branch of the subject, one that is practical, we must consider the best way to deal with "loan sharks" at the present time and under existing laws, leaving for the future (though we may express the hope that it will be a very near future) the discussion of the philosophical and juridical reforms of usury laws in general.

To resume, briefly, the *modus operandi* of the "loan sharks." A workman with no collateral desires ready money and goes to the office of a "loan shark" to borrow \$10. He is told at once that they are a substantial company and never lend less than \$25, whereupon X, duly impressed by their importance and honesty, borrows \$25. He generally borrows it of a company out of the jurisdiction, the man to whom he makes application telling him that he will act as the borrower's agent to effect the loan. This precaution, however, is sometimes omitted. He then is given \$24 in cash, \$1 being deducted for notary charges, and is made to sign four promissory notes for \$9 each and an assignment of his wages to accrue, covering all wages earned in any employment. If he makes his payments of \$36 all is well and good, but if he is late in any payment his note is protested at a cost of \$1.50 a note. (I have never seen the notary's protest, however, in any case which has come to my notice.) If he fails in payment for any length of time he is told that a copy of his assignment will be served upon his employer, who will hold his wages to the use of the loan company. Frightened by this, the poor man returns to the "loan shark" who tells him that he will help him out by lending him on small terms sufficient money to make up the deficit plus the charges, and thus obtains a larger debt against him. When the loan is as large as the "loan shark" can hope to collect from any accrued wages, the assignment is served upon the workman's employer. In most cases this results in his immediate discharge, the "loan shark" collects his wages, and as much money as has been obtained is

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credited to the workman, and he is allowed to work with another employer until some wages have accrued, when another copy of the assignment is served. Thus we see that the effect is to keep the poor man constantly paying to his utmost while the debt with interest and its incidental charges is constantly increasing against him. We may note that the action of the employer in discharging the workman cannot be blamed and is inevitable since a large corporation, for instance, cannot afford to have its pay-roll constantly disturbed.

Under existing law it is very difficult to prevent a "loan shark" from prosecuting his trade. His debtor does not usually consult an attorney until after the assignment has been served, and the debtor is usually so hampered financially that the attorney is hampered in his efforts to aid him. Success, however, has attended the following course: The client swears to an affidavit stating that he will pay the loan company on receipt of his wages and that he will prosecute his case before the next pay-day, upon which most employers will pay him the wages on hand. He immediately tenders the full debt and six per centum to the loan company and proceeds to file a bill in equity alleging usury and the illegality of a general assignment of wages. In my experience the loan company does not defend and the costs of the equity suit, including preliminary and final injunction together with the bond and printing, is a strong deterrent against the loan company's repetition of a refusal to accept the tender. This plan has been successfully worked in Pennsylvania in *Brown vs. Loan Company*, No. 3003, March term, 1911, and *Ruth vs. Loan Company*, No. 5055, March term, 1911, in the Common Pleas No. 1 and No. 4 of Philadelphia county. This seems to be the only practical legal means of fighting them at present, as a prosecution for usury is generally inadequate and impractical. We may add that this remedy is unsatisfactory from many points of view. It does not prevent the "loan shark" from proceeding with his trade and it deprives him of what is properly his due, as a legal rate is not usually commensurate with the risk in the class of loans that he makes. Furthermore, in New York the courts have refused to follow this line of reasoning, and have refused to aid the borrower, holding that there is no essential equity in his action. In many jurisdictions a general assignment of wages is recognized. The dictum of Judge Hare in *Fairgrave vs. Navigation Company*, 2nd Philadelphia, 182, is not favorable to this theory on the grounds of public policy, as is the Supreme Court in *Jermyn vs. Moffitt*, 75 Pennsylvania, 399.

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In conclusion we can only repeat what we have already stated, that the present methods of fighting the "loan sharks" are inadequate and unjust, and that new legislation is required before this pest to society can be overcome. The suggestion has been made before, and we thoroughly indorse it, that a system of publicity requiring the recording of such transactions is the only method for overcoming usury. Such a method will overcome it by competition and will not harm the man who desires to make large profits through charging a proper sum for the risk in loans without security. We cannot lay too much emphasis upon the number of companies at present engaged in usurious loans of this kind nor on the resultant social deterrent, nor can we emphasize too greatly the consequent need for radical reform based upon a thorough study of the methods of usury.

JOHN LISLE.

LOCAL SENTIMENT AND LYNCHING IN PENNSYLVANIA.

In a previous article (this journal, January, 1912, p. 669) the writer pointed out a fundamental weakness in our citizenship, namely, disrespect for law. He said: "In homicide cases it is clear that many defendants are acquitted in spite of the fact that evidence of the killing is clear and that the law says the act is murder. They are acquitted because the jury, representing often the sentiment of the community, believes that a killing is justifiable in cases where the law says it is not." A review of newspaper comment contained in the *Literary Digest* for May 18, 1912, at p. 1023, seems to bear out the truth of the above remarks. A negro murderer was burned to death by a mob at Coatesville, Pennsylvania, a conservative and aristocratic community. The negro had killed a special policeman. The *Gazette-Times* points out that "the lynching of Walker was not provoked by that crime which results in so many outbreaks in the South. It was entirely lacking in the alleged justification which is pleaded in extenuation of such tragedies in other parts of the country." Nor does it appear that there was any reason to fear that the murderer would not be given proper punishment in a trial by the properly constituted authorities.

Fourteen of the alleged lynchers were indicted. Seven of them were tried. The trials were held at the county seat of Chester county and not at Coatesville. The *Digest* reports that the evidence was generally considered conclusive of guilt, yet the first seven to be tried were found "not guilty." As a result Acting District Attorney Gaw-

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thorp and Deputy Attorney-General Cunningham asked for a dismissal of the seven untried cases. Judge William Butler at West Chester on May 2 made the following remarkable statement: "My first thought, when I heard of this crime, was that it would be difficult to secure justice for those accused. . . . Now, I am absolutely convinced that it is impossible to get twelve men in this county, by the methods necessarily to be used for that purpose, who could, *no matter what the evidence is*, bring themselves to convict anybody who was connected with this offense. I do not say this in criticism, but I say it in sorrow. At a former term of court we had a double panel of jurors, and they were as good, reliable men as could be found in this county, or could be found in any other county. Six cases were tried, and there was occasion, to say the least, for the jurors, with the most anxious effort, deliberately to consider the proofs and endeavor, under the evidence before them, to determine whether the accused's guilt was proved. *They did not do so*. I do not criticise their verdicts. I criticise the circumstance that they manifestly did not consider the evidence. They did not take time to consider it."

Of course no one at this distance may know whether the individuals accused were guilty or not. The jury found that seven of them were not guilty. The significant matter is that the juries did not consider the evidence, in the opinion of Judge Butler, and that this attitude of the jury is condoned by the sentiment of Chester county, in the opinion of the newspaper writers. If this were only one case, or if it related to only one community, or if it were confined to one form of crime, although we should have cause for shame, we might still feel free from fear as to the position of our citizenship on law enforcement. Unfortunately this attitude of juries and this condition of sentiment is not confined to one community, nor to one form of crime. Everyone knows of the difficulty of enforcing certain laws in certain communities. Where will we end if juries and communities continue to decide whether law shall be enforced according to extra legal standards?

Laws forbidding crime have the same meaning in each part of the state, whether the law is in the form of common law or statute. As actually enforced they sometimes have a very different meaning. Would the juries and communities which are responsible for this state of affairs be in favor of the following suggestion, namely, to amend our criminal codes to provide that juries shall not be bound by their oaths to give effect to any law where the prevailing moral sentiment of the community does not approve of the law? This might strike

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them as a revolutionary and indefensible proposition, but it would have the merit of avoiding violation of the oath. But it is to be doubted if any member of the numerous mobs which have participated in lynchings would approve of a law making lynching legal. They and others are willing to do illegal acts, to cast disrespect upon the law in general, but they would not wish to have their practices made legal for others and perhaps not even for themselves. This may give us some ground for the belief that respect for law is not entirely dead with the members of mobs.

To many it seems that we need a national revival to awaken us to our responsibility in this matter. Courts, lawyers, churches, schools and individuals have a duty in this respect. It is the duty of all to obey the law, to uphold those who would enforce the law and to preach the doctrine of respect for law to those who lack in respect.

C. G. VERNIER.

PAROLE FOR LIFE TERMERS.

While advocating in the *Zeitschrift fuer die gesamte Strafrechtswissenschaft* [v. 31, 8], the continuance of the death penalty in Germany, in connection with a discussion of the proposed new penal code of that country, Dr. H. Seyfarth, the chaplain of the Hamburg Central Prison, advocates conditional liberation after a sufficiently long term of years for those committed to prison on life sentences. For time sentences the maximum of fifteen years has until now been preserved, and the proposed penal code omits from any chance of liberation those committed to life imprisonment. In the *Gegenentwurf*, an opposition penal code urged by many of the leading criminologists of Germany, provision is made that the life prisoner may, at the end of twenty years, be paroled under certain conditions, and that he may be returned to prison in case of unsatisfactory conduct, thus matching the present practice of the state of New York in the case of those committed to prison for life. England allows conditional liberation to occur after fifteen years of imprisonment of a life sentence, and the following minimum terms are cited by Dr. Seyfarth: Austria-Hungary, Croatia and Bosnia, 15 years; Switzerland, between 15 and 20 years; Finland, 12 years; Norway, but 10 years, while Sweden grants no chance to the "lifers."

Answering the comment that the "lifers" are so few that the proposed penal code has not considered it practical to extend conditional liberation to them, Dr. Seyfarth maintains that there are at present at least one hundred life-termers in the German prisons. "One should

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sentence these men to long terms of from 20 to 25 years, but they should not be entirely robbed of the hope that at some future time, under favorable circumstances, they may again hope to be freed." The writer advocates a considerable parole period, because "during the term of imprisonment in enclosed prisons, every freedom of movement is systematically prohibited to the prisoner. The prisoner is thus made dependent, and when released suddenly he is like a bird with lame wings, every initiative being lacking, and he easily succumbs to temptation."

O. F. LEWIS.

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The readers of this Journal will welcome the addition of the following named gentlemen to the editorial staff: Victor von Borosini, Sociologist, Chicago; James W. Garner, Professor of Political Science, University of Illinois; William E. Higgins, Professor of Pleading and Practice, University of Kansas; Smith Ely Jelliffe, Managing Editor, *Journal of Mental and Nervous Diseases*, New York City; and John Lisle, of the Philadelphia Bar.—[Eds.]

PROCEDURE IN CRIMINAL COURTS.

WILLIAM N. GEMMILL, JUDGE OF CHICAGO MUNICIPAL COURT.

Many good citizens profess to believe that the criticism of our courts is undermining the foundations of our Republic. Such a conclusion is not justified. Ever since the world began, courts have been the most conservative forces in every land. The radicalism of every age has always been overcome by the conservatism of the courts and lawyers.

In 1381 a band of ruffians, led by Watt Tyler, stormed the London Temple which was dedicated to the law, proclaiming that henceforth all lawyers should be barred from the House of Commons, that England might secure simplicity and integrity in the enactment and construction of her laws.

In 1450 Jack Cade inaugurated the "War of Roses" by leading a ragged mob into London to tear down this temple and annihilate the lawyers. The ancient Egyptians forbade advocates to plead in their courts, on the ground that the administration of the law was thereby darkened. Glorious Athens would not tolerate professional lawyers or judges; hence Socrates was tried by a mob of five hundred judges drawn from the rabble, all of whom were eligible to sit in judgment in a criminal cause. The verdict was death, by a vote of 281 for death and 219 for acquittal. This was popular rule. Sir Thomas Moore thought lawyers and courts were an abomination. In his Utopia he said: "They have no lawyers among them, for they consider them as a sort of people whose profession is to disguise matters as well as to wrest laws."

In 1785 placards were posted in New York and Massachusetts threatening with mob violence any lawyer who dared to run for office and any man who dared to cast his vote for a lawyer.

In 1786 hooting mobs, armed with swords, muskets and bludgeons, gathered at Worcester and Concord and prevented the sittings of the courts in regular session. The same year a mob marched upon Springfield, Massachusetts, where the Supreme Court was in session and compelled it to adjourn.

In 1809 the Legislature of New Jersey passed an Act forbidding the citation in court of any case arising outside of New Jersey and

¹ Read before the annual meeting of the Illinois Branch of the American Institute, May, 1912.

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making it a misdemeanor for any lawyer to bring into court a law report or text book published in England. The next year, Pennsylvania and Kentucky passed a similar law. Henry Clay, then a member of the Kentucky Legislature, was the only member of that body who voted against it.

A remarkable change has come over us in these later days. Today, the King of England and his Cabinet are lawyers. The Lords and Commons are dominated by the members of that profession. In this country the lawyer is everywhere. His power in controlling the machinery of government is almost supreme. In the legislative, executive and judicial departments he makes, enforces and interprets our laws; instead of an embargo upon his office holding, every position of trust and confidence is open to him and most of them are filled by him; instead of a ban upon English precedent, our American critics direct us to the system of jurisprudence in England as offering a solution for all our troubles. The study of any established system of criminal procedure will lead to a conviction that none has yet been found that is free from serious defects. In this country instead of one established method of procedure we have forty-eight, no two of which are alike. It is well, therefore, in seeking a system which will offer the best results that a study be made of English judicial methods as well as the methods of other nations and of our several States in the hope that we may learn something that will aid us in correcting our own errors. For while all systems are defective, yet there is scarcely one that does not offer some valuable suggestions.

When Japan sought to adopt a system of judicial procedure the Emperor appointed a Commission and directed its members to visit the civilized nations of the World and report their conclusions upon the best plan to be adopted. This was done and the Commission reported in favor of the French judicial code, which was afterwards adopted by the Empire.

The trial of the Camorra in Italy appears grotesque to us, but in its daily word combats between the accuser and the accused the truth is often elicited where our battle of experts would have failed.

Those who have been the most severe in their condemnation of our criminal courts have been the most urgent in directing our attention to the *nisi prius* criminal courts of England, and it is well that some consideration be given to these courts before we attempt to correct the weakness of our own. It is incorrect to assume that public criticism of courts is confined to our own country. Since the Dreyfuss and

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Steinheil trials, a revolution in court methods has occurred in France, due to an insistent demand for reform.

In England, criticism of the trial courts has reached a critical stage. Lord Winston Churchill, Home Secretary, recently stated in a public address:

"Warfare exists between the great hierarchy of the law and the workingmen's guild. England needs some bulwark that will stand between the tradesmen and the courts."

In the Westminster Review of October, 1910, an English law writer says:

"That criminal trials are often conducted and sentences passed by men who are unfit for the part they have to play, can hardly be doubted."

The English Law Journal of June 18, 1910, editorially says:

"The action of the Court of Criminal Appeals in controlling and reversing the decisions of the lower criminal courts is so regular and so salutary that the cause of justice is immensely advanced and the wonder is now that we managed without it."

The same Journal, under date of November, 1911, says editorially:

"If the Court of Criminal Appeals has had no other effect it would have fully justified its existence by demonstrating as it has done that convictions of innocent persons unfortunately are much more frequent in practice than one likes to contemplate."

Recently a member of the House of Lords, in a public address, said:

"Some half dozen years ago one could hardly open a newspaper without reading a speech from some judge who proudly announced to the grand jury that no miscarriage of justice had ever taken place before him, but one no longer reads such speeches. Probably the gentleman who made them in former days has had unpleasant experiences of their fallibility in the Court of Criminal Appeals."

These criticisms show the trend of thought in England. The writer has been unable, however, to find a single criticism in the public press or elsewhere of the new Court of Criminal Appeals. Contrary to the general belief, the weakest point in the English judicial system is the trial of criminal cases. There are today substantially twenty thousand judges, recorders and stipendary magistrates presiding over criminal courts in England. Many of these judicial officers are appointed for political reasons and have neither sufficient learning or experience to make capable and efficient judges. Last year 684,625

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cases were tried by courts of summary jurisdiction and summary punishment imposed by these courts. Many of these twenty thousand judges are not lawyers and are without legal training; some of them are preachers and do not know what is or is not competent evidence; yet they arraign the accused, hear the evidence, instruct juries and sentence to prison thousands of men, women and children charged with violating the criminal laws. Their instructions to juries and comments upon the evidence are often ludicrous.

The writer has carefully examined all cases decided by the English Court of Criminal Appeals from October 24, 1910, to February 19, 1912. During this time one hundred and seventy-nine appeals were heard by the court. Every character of crime was involved, from murder to petit larceny. The judgments of the trial court were affirmed in only sixty-eight of the one hundred and seventy-nine cases; the convictions were quashed and the defendants discharged in forty-three cases; the penalties inflicted by the trial court were reduced in sixty-six cases and increased in two cases. In other words, the judgments of the trial court were set aside in sixty-two per cent of the cases appealed. No such an appalling record of errors can be found in any court in the United States. In thirty-six of the forty-three cases in which the judgments of the trial courts were quashed, the court of appeal based its decisions upon the misdirection to the jury by the trial judge. In not over one or two of the reversals were the judgments of the appellate court based upon technical objection to the indictments.

Courts have but one function and that is to insure just and righteous judgments between parties who are not able to settle their own differences. Criminal courts deal with the State on the one hand and offenders against its laws on the other. Both sides have the right to demand that the judgments of the court shall speak the truth in every case. If the accused is guilty he should be so adjudged by the court; if he is innocent, every consideration demands that he be acquitted. It is the final judgment of the court, not the method of arriving at it, that is of vital importance. If the judgment speaks the truth, it should stand; if it is apparent that it does not speak the truth, it should be annulled. The only justification for a court of appeal in criminal cases is the well recognized fact that the judgments of trial courts do not always give expression to the truth; that sometimes the innocent are convicted. So mindful are we of the rights of the individual, as against the State, that our courts of appeal are

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never permitted to review that large number of erroneous judgments in which the guilty are declared to be innocent.

The object of a court of review should always be to correct mistakes of judgment in the trial court. If an appellate court can say in any given case that the judgment is correct, it should be affirmed; but if the court has a well-founded belief that the judgment condemns to punish one who is innocent, it should be set aside no matter how it has been reached.

Most of the criticism of our courts lately has been directed against Courts of Appeal. This has been provoked by the failure of these courts, in many instances, to base their decisions upon the guilt or innocence of the accused rather than upon the methods of procedure in the trial court. Many of these critics, in their endeavor to suggest a remedy, have strongly urged upon us the adoption of the English judicial system, where, it is urged, most of the troubles we have experienced have been met. We hear it repeatedly urged that the *nisi prius* courts in England are much more effective than our courts in suppressing crime and lawlessness. It is urged that this is due in large part to the greater experience and learning of the judges, to the greater freedom of the court in selecting and instructing juries, to the removal of judges from politics and public clamor, to the simpler methods of procedure, and finally, to the absolute certainty with which justice is meted out in every case in the trial court and the infrequency with which these judgments are disturbed by their Court of Appeal.

The English judicial system presents many valuable suggestions for our consideration. There is a solidarity about it that evokes our admiration. The Lord High Chancellor is not only the highest judicial officer of the realm, but he has power to control and direct every judge, clerk, sheriff, bailiff and constable in the Kingdom. Every part of the entire system responds to this centralized authority which has power to promulgate uniform rules of practice and enforce obedience to such rules in all courts, whether of superior or inferior jurisdiction. The English Court of Criminal Appeals is a model for efficiency. It is presided over by three judges who are appointed by the Lord Chief Justice from the seventeen judges who compose the King's Bench. The personnel of the court changes from time to time as the Chief Justice may direct. The court is in session as a criminal court as long as any business remains to be done. When this work is accomplished, the judges resume their duties as judges of the King's Bench. In the six hundred criminal cases that have been before that court since its

creation in May, 1908, the average time that elapsed between the date of the conviction and the final disposition in the Court of Appeal, is less than four weeks. If one accused of crime is convicted and desires to have his cause reviewed by the Court of Appeal, he at once prays an appeal, which, if granted by the trial court, requires him to go at once before the reviewing court and there, either in person or by counsel, to urge the grounds of his appeal. There is no delay incident to the preparation of a record. The original record is taken physically before the Court of Appeal, which immediately hears and disposes of the cause. If the appeal is urged on the ground of newly discovered evidence, the appellate court immediately proceeds to hear such further evidence. If the ground of appeal is that the defendant is not guilty, the court immediately passes upon that question, oftentimes calling the appellant before it and questioning him in open court touching his guilt or innocence. If the appeal is urged on the ground that the penalty inflicted is excessive, the court may reduce the penalty. If, however, the court after hearing the accused, is of the opinion that the penalty inflicted is too light, the court has the power to increase the penalty, and it not infrequently exercises such power.

The aim of the court in all cases is to correct, as nearly as possible, the mistakes of the trial court. The result of this practice has been to bring about a standardization of penalties. An accused will not take the chances of an appeal unless he believes he has a meritorious cause when he understands that the court has the power to increase his penalty.

The sittings of this Court of Criminal Appeals are more or less informal. The presumption of innocence that obtains before conviction does not prevail in the Court of Appeal. Here the accused is required to submit himself to oral examination by the members of the court. Counsel on both sides are permitted to present any question they see fit touching the guilt or innocence of the accused. Usually the opinion of the court is expressed orally by a member of the court before the adjournment upon the day the appeal is argued. This opinion is taken down in shorthand and later filed as the opinion of the entire court. These opinions are models of brevity. The judges of the court do not think it necessary to bolster up their decisions by the citation of a long list of authorities, and seldom is an authority quoted.

Two or three such opinions might not be out of place in this paper. On October 6, 1911, Christopher Stokes, a porter, was convicted at the Quarter Sessions of having stolen a satchel from a gentleman staying at a hotel. He was sentenced by Lord Coleridge to six months' im-

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prisonment at hard labor. He appealed, and on October 30th obtained a hearing in the Court of Appeal. At that time a waitress of the hotel testified that she had seen the porter carry a similar bag on many previous occasions and had also seen a man answering the description of the porter take a similar bag from the hotel upon the day in question. This additional evidence was heard by the Court of Appeal, whereupon Mr. Justice Darling stated the opinion of the court in the following language:

"In view of the fresh evidence, the conviction is too doubtful to stand; the onus was on the appellant to prove that he did not steal, and having regard to all the facts, the verdict cannot be supported. Under S. 4 of the Criminal Appeal Act, 'the appeal shall be allowed if the court thinks that the verdict cannot be supported, having regard to the evidence.' Evidence there means all the evidence, including the further evidence called for the first time before the Court of Criminal Appeal. The conviction must therefore be quashed."

Solomon Zausner was convicted in Quarter Sessions on October 6th, of stealing a watch and sentenced to six months' hard labor and recommended for expulsion under the Aliens Act. He was a Russian subject. He appeared before the Court of Criminal Appeal on October 30th, in person, and told the court that this was his first offense, that he had a wife and three children, that he had been ten years in England, that he was a Russian subject, and that if he was sent back to Russia he would be shot for having deserted the army in Manchuria. The court thereupon at once rendered the following opinion:

"Enquiries have been made, and it has been ascertained that the appellant would not be shot if he were deported to Russia. But it is probable that he would be punished for desertion. Having regard to all the circumstances, we think that it is not a case in which it is advisable to inflict the penalty for expulsion. So much of the sentence as recommends expulsion will be quashed, and the sentence of six months' hard labor will run as from the date of conviction."

Frederick Bradford was convicted at Quarter Sessions on October 7th of malicious damage to property and sentenced to four months' imprisonment with hard labor. He was under sixteen years of age and was convicted of having thrown a stone at a Chinese laundry and broken a window. He appealed, and his case was heard on October 30, 1911, before the Court of Appeal, the boy being present in court. Mr. Justice Hamilton rendered the following opinion:

"This sentence cannot stand. The Sections of the Children Act applicable to this case were not brought to the notice of the Recorder, and he passed a sentence which he had no power to inflict. The maximum sentence which could have been imposed under S. 106 of the Children Act was a month's detention and as the appellant has already been in prison for three weeks, the court thinks

it unnecessary to substitute the formal sentence which might have been passed, and orders the appellant's liberation from custody."

If our Courts of Appeal would always require the parties or their counsel to appear before the court upon the call of the cases and urge the specific ground of appeal, and these courts, after-hearing the arguments and such further evidence as might be offered, would at once render their decisions in the simple and common phrases characteristic of the foregoing opinions, there would be much less outcry against long delayed justice in this state.

Contrary to the common belief, the weakest place in the entire English judicial system is its *nisi prius* criminal courts. It is not true that these courts are less influenced by public or political clamour than are our American courts. During the recent strikes in London, many rioters were arrested. When arraigned for trial, a mob of two thousand people, headed by the leaders of labor organizations, paraded up and down the streets in front of the court building, threatening and condemning the courts and the police. The Home Secretary's office, becoming alarmed, directed the crown prosecutors to drop the prosecution. The prisoners were released, left the courtroom, and took their places at the head of the procession, where they marched with floating banners through the principal streets of London. In order that young King George might show that he was a good fellow and a genuine friend of the people, he pardoned 11,873 prisoners on the day of his accession to the throne.

The militant suffragettes have defied the court and officers of the realm. They have congregated in front of the homes of members of Parliament and of the Cabinet, hurled stones and missiles through their windows, and otherwise heaped indignities upon public officers, which would not be tolerated in the most abandoned communities in this country. The government has apparently been paralyzed at times and prosecuting officers have almost wholly failed to perform their duties under grave circumstances. So often during the last two or three years has the Home Secretary's office interfered with crown prosecutors in the discharge of their sworn duties, that a serious controversy has arisen as to the right of this high government official to thus meddle with the work of the courts. During the recent labor strike, Judge Rentoul then sitting in the Criminal Courts in London, attended and addressed a mass meeting of strikers; the closing words of his speech were as follows:

"I hope to see you all again, and I want to give you a word of earnest advice. When you are in the docks at the Old Bailey, do not

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pretend to know me, but pass up the words 'North Paddington,' and I will do the best I can for you."

In the recent Harvey Crippen trial at the Old Bailey, which assumed international importance, Lord Alverstone, Chief Justice of England, so far forgot the dignity of that high office that he stepped down from the King's Bench, over which he presided, to the famous old police court, that he might preside in a case that was then attracting the attention of the civilized world. No apparent excuse was offered for this remarkable step. No reason is urged why one of the twenty thousand judges, recorders and magistrates, who usually sit in such trials, could not have presided with as great dignity and learning as the Lord Chief Justice himself. In an examination of the records of the criminal trials in England in the last few years I have found no similar incident; murder cases are tried as other cases, by *nisi prius* judges, who are assigned to the various courts by the Lord Chief Justice for that particular work. Not only did Lord Alverstone thus seemingly yield to the desire for public applause, but while presiding in this now famous case, he permitted artists and photographers to be present to sketch and snapshot the judge, the jury, and the array of splendidly attired theatrical ladies, who sat by his side upon the Bench. These pictures were published in the daily papers from day to day during the trial. The Law Journal published in London during the week of the trial, said:

"It is unfortunate that the arrangements made for the admission of the public to the court of the Old Bailey were so incompatible with the solemnity of the proceedings. The issue of half-day tickets to fashionably attired ladies tended to give an unpleasant theatrical tone to the audience, a tendency which was not lessened by the presence of not a few actors and actresses throughout the trial, and what is justly objected to, is that many of these elegantly gowned ladies were accommodated with seats on the Bench. It is to be hoped that some measures will be taken to prevent the morbid curiosity of 'smart people' from reducing the trials at the Old Bailey to a level of melodramatic theatrical."

During this trial, the bar of the Old Bailey met and passed resolutions denouncing the management of the trial because the seats in the court-room, which had always been reserved for the bar, had all been taken by the friends of the judge and officers of the Crown, to whom half-day tickets had been issued.

The Law Journal of September 17, 1910, says:

"It has become a common thing for prisoners to be photographed

in the dock. The Jockey Club of London recently prohibited the camera and snapshot at all races, but apparently the courts have not made the same progress."

Harvey Crippen was an American doctor who was charged with murdering his wife. In all probability he deserved his summary fate; but if so, to have had the Lord Chief Justice of England, the dazzling array of fashionable ladies of the realm, and the theatrical stars of the great metropolis of the world, sit smiling and frowning upon him while he was being condemned to death, was a crown of glory greater than he deserved.

A recent American visitor to an English criminal trial, said with apparent approval:

"The judge in his charge to the jury was more severe in his arraignment of the defendant than was the Crown prosecutor."

While this language was not spoken of Lord Alverstone in the Crippen case, yet one has only to read his charge to the jury to realize that the statement would be perfectly true in this instance. Immediately upon the return of a verdict of guilty, the great Lord Chief Justice put on the black cap and sentenced the prisoner to death, within three weeks, with the remark, "May the Lord have mercy upon your soul." He thereupon at once proceeded to the trial of the defendant's guilty associate, Miss Le Vene, a beautiful stenographer and budding actress, who lived with Crippen, in his home, while the body of his murdered wife was rotting in the cellar, and who, dressed in man's attire, fled with him toward America, and was captured with him on board the vessel and returned to England for trial. But the great Lord Chief Justice, with a smile and a wave of the hand, directed the jury at once to find the defendant not guilty. Crippen thus summarily convicted, immediately prayed an appeal to the Court of Criminal Appeals. Great, however, was his chagrin when he found that the three judges composing that court were Lords Darling, Pitford and Channell, all of the King's Bench, and all of whom had been appointed to the appellate bench by the same Lord Chief Justice Alverstone who had just condemned him to death and that the same judges could be removed from that bench at any time by the word of the same Chief Justice.

Who would regard with complacency the descent of our grave and learned Chief Justice Edward White from his exalted post at the head of the Supreme Court at Washington for the purpose of trying some notorious criminal at the old Harrison Street Court in Chicago?

Recently three judges of the King's Bench who receive an annual

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salary of thirty thousand dollars and whose time is mostly devoted to hearing appellate cases of great importance, were found to be engaged in trying sensational theatrical cases in London. One case was that of a prominent actress arrested for wearing an enormous hat at a matinee performance; another was a legal fight over a stage bloodhound; a third had to do with the ape, "Consul." Consul was claimed by his owners to be possessed of human intelligence and more than ordinary ape accomplishments. One of these accomplishments was the ability to sign his own name to a contract. He had executed in his own name a contract with a certain music hall to perform at three hundred dollars per week. The contract was broken and the great legal question over which the King's Bench wrestled for days was whether or not a contract signed by an ape in his own name could have any binding force.

Space will not permit of a discussion of the many grave and serious weaknesses in the trial of English criminal cases; but an examination of the reports of their Court of Appeal will convince any reader that the argument often advanced that the great time saved by the English courts in securing juries without any examination whatever as to their prejudice or their fitness to preside in any given case, is not one that will commend itself. The reversal of criminal cases by the English Court of Criminal Appeals has shown that jurors must not be mere puppets in the hands of the court, but must be men without bias and capable of understanding the ordinary rules applicable to the trial of criminal cases. This point is nicely illustrated in the very recent case of *Rex V. Alexander*, tried in London on January 4, 1912, and heard in the Court of Appeal on January 25th of this year. In this case, Alexander was charged with having abducted a girl and when placed upon trial before Judge Rentoul pleaded not guilty. After the evidence had been heard, the judge began (what he called) a direction to the jury. It was, however, a bitter denunciation of the defendant. So bitter and convincing were his words to the jury that the defendant himself became convinced that he was guilty and rose in court and stated that after hearing the judge's learned argument was convinced that he was guilty and desired to change his plea from not guilty to one of guilty. Thereupon the jury rendered its verdict of guilty and the judge sentenced him to two years at hard labor. He asked for an appeal, which was granted, and upon a hearing before the Court of Criminal Appeals, that court said that Alexander not only was not guilty of the offence charged but that he deserved to be commended for his kindly treatment of the girl.

A large number of the forty-three cases decided by the Court of Criminal Appeals during the last year wherein the court quashed the conviction and set the prisoner free, the defendant was held to be innocent in fact. Most of these erroneous convictions were due to a wilful or ignorant misstatement of the facts by the judges in their charges to juries. It is not wise to give to trial judges the unlimited power to comment upon the facts. It is this power of English judges that has sent and is sending a considerable number of innocent men and women to prison. The power of the judge to express an opinion upon the weight of the evidence may well be reposed in judges who are free from the power of governmental influences on the one hand, and political, social or other consideration upon the other. But the judge is too prone to impose his own opinions upon the jury and thereby force of argument impel verdicts, often cruelly unjust.

It is not in the interest of justice that no preliminary examination be made of prospective jurors before they are permitted to sit in judgment upon one who is charged with a serious offence where grave consequence to him and his family may result. No one would select a coachman to handle his horses, or a servant to care for his home, without some examination as to the fitness of the person selected. How absurd it is to say that you may select at random twelve men from any walk in life without a word of inquiry as to their fitness, place them in the jury box to pass upon the lives and liberties of citizens and expect just and sane verdicts. A judge should be given the power to restrain within proper limits the examination of jurors, or he should examine them himself with great care, and courts of appeal should be slow in basing reversals upon restraints of counsel by the trial judge. Too much time, however, elapses between the trial of a criminal cause and its final disposition in a court of appeal. We can well afford to adopt the English system in this regard and require an appeal to be taken at once without waiting for the long preparation of a record, or for the beginning of a term of court. The original record should be certified by the trial court to the court of appeal so that no delay would result. Criminal cases should be disposed of in courts of appeal within a period of not more than three or four weeks from the time conviction is had. It is the quick and summary punishment that is effective. Punishment long delayed in criminal cases is justly the subject of severe condemnation.

In Chicago misdemeanors are tried and summarily disposed of by the Municipal Court within one week from the time the charge is made. A writ of error, however, may be sued out of the Appellate

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Court for the First District and by filing a bond the cause delayed for from two to three years. At the present time in the neighborhood of one hundred and fifty such criminal cases are pending in the Appellate Court of the First District. The guilty defendants are at large in our streets, many of them continuing the crimes for which they were convicted. This is an intolerable condition. The Supreme Court of this State should at once designate one of the four branches of the Appellate Court of this District as a criminal branch and direct that this court sit continuously until all criminal cases are disposed of. It should provide that hereafter when a conviction occurs and a review is desired by the defendant, he shall at once go before this branch of the Appellate Court and have an immediate hearing. This branch of the court should be continuously in session, except during two months of the summer season, and be ready upon any day to hear such criminal matters as may be presented. The same rule should apply, in part, to all other courts of appeal that have jurisdiction in criminal cases. The demand of society for protection against the criminal on the one hand, and the demand of the individual who may be wrongfully convicted on the other hand, makes it imperative that these cases should be heard before cases which involve merely the right of property between individuals.

The writer is strongly of the opinion that all Appellate Courts should be given the power to summon before them convicted persons for examination and further inquiry, and that wherever a new trial is sought on the ground of newly discovered evidence, the appellate court shall at once, if a reasonable showing is made, hear such evidence. Our Supreme Courts and Courts of Appeal should be given the power to raise or reduce the penalties inflicted. It will not often occur that the penalty should be increased; but a guilty offender knowing that the court has the power and will exercise it in a proper case will be slow to clog the court with his appeal.

It has long been recognized in this State that punishments for offences are most unequal. These depend in large measure upon the whim of a particular judge or jury. One judge may have strong aversion for a certain class of offenders, while another will give scant consideration to such violators. In this country we have no standard of penalties. The English Court of Criminal Appeals has brought about a most satisfactory standardization of penalties. That court has found it necessary in almost one-third of its cases to reduce the penalty inflicted by the trial court and to increase the penalty in other cases. No good reason exists why our courts of appeal should not have the

same power and why such power wisely exercised would not be of great advantage to the cause of justice.

It has so frequently been urged in this State that the Grand Jury should be abolished and felonies tried upon information rather than upon indictment, that it seems hardly worth while to discuss the question. There is not the slightest doubt in the mind of the writer that more than one-half of the failure of our courts in suppressing crime is due to our adherence to that relic of Star Chamber days—the grand jury. Why should it be necessary for judges trained in the law to sit for days and listen to evidence presented at preliminary hearings both for the prosecution and the defense and then, if probable cause is found, to hold the accused to a body of men who know no law and have no understanding of the rules of evidence? It is hard to understand why an indictment once voted cannot be amended after the adjournment of the Grand Jury. From an instrument of justice, the Grand Jury has today become a convenient cover to hide the responsibility of the State's Attorney and often a convenient instrument in the hands of unscrupulous persons to punish their enemies or reward their friends.

In the year 1909, the judges of the Municipal Court of Chicago, after hearing the evidence both for the prosecution and the defense, held 2,249 persons to the Grand Jury. That jury, after hearing only the evidence for the prosecution, discharged 798 of this number. The record of 1909 was duplicated in 1910 and 1911. Seven hundred and ninety-eight persons found guilty by the judges of the Municipal Court of having committed felonies in the City of Chicago in one year, were turned loose to prey upon the community by the Grand Jury! The State's Attorney is able to shift his responsibility as a prosecuting officer upon the shoulders of a body of men who are responsible to no one. This is an appalling record and illustrates the helplessness of the courts in ridding the community of its outlaws.

Many of the states have gone on record in the last few years as opposed to the grand jury system. The following states either have no grand juries or summon them at infrequent intervals: Wisconsin, Vermont, Colorado, Missouri, Wyoming, Oklahoma, Utah, South Dakota, North Dakota, Nebraska, Idaho, Kansas and Michigan. In these states, felonies and misdemeanors are tried upon information and not upon indictment. In Oregon, where progressive legislation is rampant, the Legislature, in 1908, changed the method of presentation in criminal cases from information to indictment and forbade judges to instruct the juries orally. I do not believe that in instructing juries

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judges should have the power to express an opinion as to the weight of the evidence, but do believe that they should have the power to instruct juries orally, and that exceptions to such instructions should be preserved only when taken in court before the jury has retired from the bar. This is substantially the practice today in the following states: Massachusetts, Rhode Island, South Carolina, Louisiana, Pennsylvania, Connecticut, Delaware, Wisconsin, Ohio, Maine, North Carolina, New Jersey, Vermont, South Dakota, North Dakota, New Hampshire, New York and Michigan. In some other states, the court may instruct the jury orally unless requested by the parties to instruct in writing.

There are fundamental defects in the criminal laws of this State which should be remedied by legislative enactment. Foremost among these is the abolition of the ancient and absurd distinction between felonies and misdemeanors. A felony in this State is declared to be an offense punishable by death or imprisonment in the penitentiary. At common law a felony was a crime so debasing in character that he who committed it forfeited not only his lands and tenements but his political rights; his wife forfeited her dower, his blood was corrupted and his children to the second and third generations were declared to be base and ignoble. Misdemeanors were all other crimes.

A law fails whenever the reason for it fails. The forfeiture of lands and tenements as a penalty for crimes has been prohibited for more than a century, except in the case of treason. Blood attainer lives only in history. Notwithstanding these changes, our criminal laws recognize this ancient distinction between felonies and misdemeanors. The distinction, however, is not based today upon the character of the crime but upon the penalty inflicted. If the crime in Illinois is one which carries with it the penalty of death or a term in the penitentiary, it is a felony. If its punishment is by fine or imprisonment otherwise than in the penitentiary, it is a misdemeanor. Many misdemeanors in Illinois are more grave and ignoble in character than some of the felonies. Next to the crime of murder there is none more base than that of pandering; yet the extreme penalty for the first conviction under this charge is imprisonment in the county jail or house of correction for a period of not less than six months nor more than one year and by a fine of not less than three hundred dollars and not to exceed one thousand dollars. It is a far more serious crime in Illinois to steal sixteen dollars of your money than it is to steal your daughter and consign her to a den of harlots.

One of the most common offences in this state is that of obtaining

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money or goods by false pretenses. It frequently occurs that shrewd and unscrupulous persons are able, through cunning argument, to obtain hundreds and often thousands of dollars from unwary persons through the medium of worthless stocks, lands, and other devices. Yet the penalty for such conduct is a fine not exceeding two thousand dollars and imprisonment in the County Jail not exceeding one year. Great combinations of capital are formed by unscrupulous men, competition throttled and millions of dollars forced from a helpless public, yet the penalty provided by the Statute of Illinois for this offence is a fine of not less than two hundred dollars nor more than one thousand dollars, or imprisonment in the County Jail not to exceed one year, or both.

The law-makers of this State have been over-solicitous in guarding our citizens from the small pilferer and embezzler but have failed to protect them against the shrewd and cunning crook. It has been safe for the compounder of poisonous foods to destroy the health of entire communities by selling their noxious compositions. A conviction for the fraudulent adulteration of bread or the sale of diseased meat in this state carries with it a fine of not to exceed one thousand dollars and an imprisonment in the County Jail not to exceed one year. In more recent years, great effort has been made to place the physical and moral well-being of the child above any consideration of money or property; yet in Illinois the man or woman who deliberately leads astray the child, by contributing in innumerable ways to its delinquency, is subject only to a fine of two hundred dollars, or imprisonment in the County Jail for not more than twelve months, or both.

Since 1845, the Statutes of Illinois have declared the following crimes to be infamous: Murder, rape, kidnapping, wilful and corrupt perjury, or subornation of perjury, arson, burglary, robbery, sodomy, or other crime against nature, incest, forgery, counterfeiting, bigamy and larceny. By an amendment to this act in 1911, it was provided that larceny should only be infamous when the punishment therefor was by imprisonment in the penitentiary.

It is hard to understand why an enlightened community should say that larceny and counterfeiting should be infamous and that pandering and contributing to the delinquency of children should not. An infamous crime under the Fifth Amendment to the Constitution was a crime that involved the charge of falsehood and which injuriously affected the public administration of justice. It was recognized as a crime which involved moral turpitude and imported such depravity in the perpetrator as to render him incompetent as a wit-

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ness. The classification was not based upon the severity of the punishment, but upon the nature of the crime itself. No such meaning attaches to the term "infamous" under the laws of this State. Our legislature has arbitrarily included in this classification certain offences which bear no relation whatever to the original meaning of the word. It is a well recognized fact that a custom has long existed in this State of pardoning all convicts upon the expiration of their terms in the penitentiary in order that they may be restored to all the rights of citizens. The law making certain crimes infamous is not only a perversion of the common law, but it is a dead letter and but a stumbling block in the administration of justice. In the recent case of *People v. Russell*, 236 Ill., 612, a girl was convicted of having stolen fourteen dollars. Our Supreme Court, while recognizing that the offence was petit larceny and the penalty inflicted was a fine and imprisonment otherwise than in the penitentiary, yet reversed the cause on the ground that petit larceny was an infamous crime. The result was that an established practice of fifty years was overthrown and county courts and the Municipal Court of Chicago were deprived of jurisdiction in the thousands of small cases that heretofore had been summarily disposed of, and were obliged to hold such offenders to the Grand Jury, thousands of whom were compelled to lie in prison for varying periods of time before they were given an opportunity to be heard upon the question of their guilt or innocence.

It is absurd to say that one who under the stress of untoward circumstances steals from a department store or other place, five, ten or fifteen dollars' worth of goods is infamous while no such stigma attaches to the corrupter of children and the debaucher of innocent girls! There is no good reason why this statute should be retained.

These artificial classifications of crimes should be abolished and penalties inflicted according to the gravity of the offence. It is absurd to say that one charged with forgery must be indicted before trial, while one charged with pandering may be tried upon information! Or that one charged with larceny of more than fifteen dollars must be indicted, while one charged with contributing to the delinquency of children may be tried upon information! There is no logical ground for these distinctions. The last twenty-five years has witnessed a great change in the attitude of the public towards anti-social crimes. More consideration is given today than ever before to the prevention of crimes, and particularly such crimes as contribute to the moral and physical delinquency of the race. Our law-makers have not kept pace with public sentiment along this line.

In 1833, the Legislature declared that the theft of five dollars or less was petit larceny. In 1867, the theft of twenty-five dollars or less was made petit larceny. The same Legislature, however, amended the law so as to make the theft of fifteen dollars or less petit larceny. Thus it has remained ever since. Fifteen dollars in 1867 was equal in purchasing power to fifty dollars today. The temptations to depart from the paths of rectitude have multiplied one hundred fold.

It is well recognized by those who have had any experience with the Criminal Court of this State that for twenty-five years the judges and state's attorneys have allowed persons arrested charged with having stolen property of the value of from one to one hundred dollars to plead guilty to petit larceny in order that slight but summary punishment might be inflicted. This has been done in open violation of the letter of the law by substantially all the courts of the state. It is of the utmost importance, therefore, that the law concerning larceny should be so amended that the line between grand and petit larceny should be fixed at not less than one hundred dollars.

Such legislation is urged as will effectuate the following changes in the criminal laws of this state:

First: The abolition of the Grand Jury.

Second: The designation of certain appellate courts as courts for criminal appeals whose duty it shall be to remain in continuous session until all appeals are disposed of.

Third: Instructions to juries should be oral and exceptions should be allowed only when objection is made and exception taken before the jury has retired from the bar.

Fourth: Some method should be provided by which the original record of the trial court may be transferred at once to the court of criminal appeals.

Fifth: All courts of criminal appeals should have the right to summon and hear the evidence of additional witnesses, when newly discovered evidence is urged as the ground of appeal.

Sixth: Courts of criminal appeals should have the right to compel the presence of appellant and his counsel upon the call of the calendar, to examine appellant under oath if desired and to require his counsel to state the points relied upon to sustain the appeal.

Seventh: Such courts of appeal should announce in court at the close of the hearing, if they choose to do so, their decision and the reasons which led to it. Such reasons so stated should be taken down in shorthand and when afterwards revised by the court, filed as the written opinion of the court.

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Eighth: Opinions should be very short.

Ninth: The distinction between felonies and misdemeanors should be abolished.

Tenth: Section 279 of Chapter 38 defining infamous crimes should be repealed.

Eleventh: The line between petit and grand larceny should be raised from fifteen dollars to one hundred dollars.

THE IMMIGRANT IN THE NEW YORK COUNTY CRIMINAL COURTS.

ROBERT FERRARI.

Member of the New York City Bar.

The immigrant who gets into the toils of the criminal law is, indeed, in a plight. From the moment the policeman arrests him till the moment he goes to the electric chair, or comes out of prison—for the two natural and almost necessary consequences of being arrested are death or imprisonment—he is a football. He is kicked hither and thither by individuals, by institutions, by society. Not once does he assert his personality, not once can he protest the inviolability of his liberty and his life. The wind bloweth where it listeth. Do you see yon mass, a vague conglomerate object, now rising, now falling, now veering to the right, now violently moving to the left? That mass—would you believe it?—is a man—a man, endowed with will power, and possessed of intelligence.

“But how can that be? The movements of the body seem to be involuntary movements. They do not seem to be caused from within, but appear to be conditioned from without.” “Nevertheless, it is a man. The man is not in his accustomed environment. He is a stranger in a strange land. He is within our gates, has come recently, or some time ago, but not yet enough acquainted with us to be capable of making use of his intelligence, or of putting forth will. He is a straw blown by the lightest wind and to immeasurable distances. Nevertheless, he is a man.”

The immigrant is at the prisoner's bar before the Police Court Justice. He is bewildered, lost. He has no friends, no one to aid him. He is not represented by counsel. With lightning-like rapidity the complainant gives his testimony, which the defendant does not understand. A *prima facie* case has been made out. “Does the prisoner wish to say anything? He is warned that, if he does, it may be used against him, but that he is not compelled to say anything.” This in formal, ponderous, legal phraseology, is shot at the mute and deaf defendant with the rapidity of a cannon ball. Things have to be done fast. One hundred cases like this must be tried today. “Held for the Grand Jury.” “Get off—Come on. This way,” cry two or three attendants, and straightway they whizz the prisoner off to the jail.

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He has been here one day, or maybe two or three or four. Now he is taken to the county jail to await indictment by the Grand Jury. He is put in a cell, fed miserably, and kept there long.

Some days after the prisoner's arrival at the county jail he is arraigned for pleading. He has no lawyer. Professional criminals are well provided for, but these strangers rarely have means, and, when they have, they do not know where to turn for a defender. The Court ascertains whether the defendant "has means," and whether he has a lawyer. "No means" shouts the attendant who is standing by the prisoner.

The Judge looks around and pounces upon some one present. In another place I have given a full description of the kind of lawyers who practise in the Criminal Courts of New York County. It is enough here to say that they are, as a rule, incompetent to the last degree. The unfortunate situation of the client is enhanced to extremely perilous proportions when, as often happens, an Irishman is called upon to defend a Russian, an Austrian, a Bohemian, a Jew, or a Jew is called upon to defend an Italian. There can be no rapport between attorney and client. The means of communication is denied them. If, perchance, as once in a blue moon it occurs, the attorney gets the story in the counsel room from a fellow prisoner, or outside of prison from a relative, it is a distorted story, which could be of little use to even a competent defender. Defenders are not paid by the County except for assignments in murder trials, and these plums do not go to the rank and file. To be sure, they are not given to more competent men—but the men who do the humdrum workaday labor in defending on assignments, men charged with burglary, with assault, with robbery, with arson, are not the men who taste the fruits of a two hundred and fifty dollar murder case assignment. The cheap man must make what he can out of the robbers, the burglars, the incendiaries, the assaulters, and out of the relatives of these. For these prisoners sometimes have ten or twenty or more dollars, and the lawyers have runners and intermediaries. It happens frequently that the foreigners are grateful to counsel who come into prison to see them and talk over the case with them—grateful for the visit and the interest—and proud of their self-respect. It is no rare thing to be treated to the sight of one of these immigrants offering what he has as a retainer, without the slightest suggestion on the part of counsel.

"I haven't very much. Some money was coming to me, from the employer I worked for last before I was arrested. My sister is going to go for it. It's only ten dollars, and that's all I have. My parents are old; and feeble. They

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can't support themselves in their native town, so I must send them half of what I make. The other half disappears. So it is that I have been in this country six years and have now only my two strong arms. My sister is going to bring the money to me Monday. When you come then, I shall give it to you. Please take care of my case. I struck that man. Yes, I don't deny it. But who could stand the teasing and nagging and worrying, the scolding, the barking and the biting, 'Dago, Dago, get out of here. I'm going to get rid of you yet'—And then when I was going about my business getting the soiled towels in the room, again he called me names, again he said he would kill me. Why? He said the boss liked me because I was good, and did everything he told me to do. *He* didn't want to be disturbed. To go into the same room where he worked was a crime. That made him so mad. I was a foreigner and that was enough. But when I went about doing my work with good will and walked into his room—*his* room—where the boss had told me to go—it was more than he could stand. Then I was 'Dago' one hundred times over. Then I was all sorts of bad things. Oh! what he said about my mother and my father, and my sister? I kept quiet. I didn't want to have any trouble. I knew how hard it would be for me to get out of prison once I had got in, and it is so easy to get here! I was quiet. I spoke nothing. I went about my business, picking up the dirty towels. Then he yelled out loud, 'You dirty Guinea, get out of here. I'll do you up yet. Get out!' And then I looked up and saw a big table knife in his hand. He was holding it up and coming toward me. 'I'll kill you. You must not work here any more.' He was near me now, very near, and he was still clutching the knife. He made a lunge. He missed me. I was in the army in the old country. I'm not afraid. I don't lose my head so easily, and I know how to get out of the way of danger. Bullets have howled around me, and I have not moved a muscle. Ask Lieutenant Bruno. He knows. Oh! I wish he were here. Lunges have been made at me with flaming swords and I have not been afraid. But, per baccho, that man had me in a very close place and I had no means to defend myself, not even to ward off his blows. The sharp point of that table knife was coming down upon me. I had to do something. Isn't it the law here that a man may preserve his own life when anybody unlawfully wants to take it away? I had an ice-pick hanging from the belt around my waist. I pulled it out and I hit him before he could strike me. I struck him once on the thigh, only once, to make him stop. I could have punctured his head. I could have struck him in the face. I didn't. I wanted him to stay after the blow. And after the blow the coward collapsed. He howled, ran out of the room, and said I had tried to knll him—stabbed him with a long knife. The policeman came, and brought me to court. I've now been here a month and a half."

It is sheer folly to act as a man's defender when you don't know his customs, the institutions under which he has lived, the laws he has obeyed, the environments that have moulded him, the language he speaks. Not only can you not find out his defense—his complete defense, not a mangled thing—but there are innumerable matters that come up or may come up if you are alive to the situations which call for intimate knowledge such as has become a part of yourself. The

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veracity of a witness is that quality which is most often attacked by cross-examiners. They attribute wonders to the showing up of discrepancies in testimony which indicate that the witness is not truthful. If he is not veracious in these things, they argue, he is not veracious in others. Whether or not the efficacy with which they endow their efforts is justified by results as seen in the verdicts of juries, long experience has taught the extreme importance of exhibiting the inaccuracies and the blunders, wilful or innocent, of witnesses.

Now, it is sometimes very easy, if you are impregnated with the subject matter which is under discussion, or only secondarily involved, to see at a glance that the witness is uttering falsehood upon falsehood. But this vision cannot be had by the defender who knows not even superficially the language of the prisoner. For instance, an Italian is on trial for the burglary of two valises from a basement in Mulberry Street. The complainant, a banker, takes the stand, and on direct examination recounts a conversation between himself and the defendant, in which, the complainant alleges the defendant admitted the burglary, and told him where the property previously stolen was hidden. The theory of the defense is that the complainant was mistaken and that for two reasons: first, because he had not understood the defendant, since he came from a part of Italy where the dialect was difficult to understand by the uninitiated, and second, because the defendant was naturally stolid, stodgy, and ignorant, and had difficulty in expressing his ideas in his own dialect, and so the complainant had unconsciously misinterpreted the words of the defendant. What the defendant had said was that he had seen two men a few minutes before walking away from the basement with the valises in their hands and had recognized one of the men as being a person who had been arrested and convicted upon the charge of burglary some six months before. Everyone knew him. A little knowledge of the way in which people in that neighborhood lived where honest and dishonest persons were thrown constantly together, and where no choice of associates was possible, made it clear that the defendant may have been perfectly innocent of all connection with the real burglar. On cross-examination the banker is positive that he could not have misunderstood the prisoner. Upon further questioning he testifies that he knows all the dialects of Italy:

"How many are there?" "Oh! seven or eight," he replies. "Do you speak all these seven or eight?" "Of course."

Suppose this cross-examination was being conducted by a stranger

to the facts. He would be stumped, non-plussed. But notice the method of the man who knows.

"You say there are seven or eight dialects in all Italy?" "Yes." "What part of Italy do you come from?" "Basilicata." "What town?" "Charomonte." "Mention another town within a radius of ten miles." "Roccanova." "Another." "Simisi." "Do you understand the word 'Cola'?" "No." "Do you understand this sentence?" (A sentence is given.) "No." "Don't you know that the word and the sentence are parts of the Roccanovan dialect?" "I do not."

Now this is not evidence, of course. No one knows whether or not the lawyer has made up the word and the sentence. But it has done this great good: it has put the witness in fear of deviating from truth. He knows there are more than several hundred dialects in Italy. He knows he cannot understand the dialects of villages only a few miles away from his native village, let alone dialects of villages and out of the way places great distances from it, which are conglomerates not only of degenerate Latin but of corrupt words and phrases of the Romance languages, especially French. The next question, therefore, floors him.

"Isn't it true there are over a hundred dialects in Italy?" "Yes. But I understood that man very well." "Where does he come from? Not from your town or your province? He is a Catanian. Where is Catania?" "Very far away. But I know what he says. People from all over Italy come to my bank."

Now, ninety-nine chances out of a hundred this is not true. He is exaggerating mightily. Bankers notoriously deal only with people from their Province. It is these who go to his bank because he is their "paesano," their fellow-townsmen, or their near paesano, their fellow-Provinceman, and so have faith, trust and confidence in him. It means a great struggle and a great risk to put your savings into the hands of one whom you do not know, or have no sentimental connection with. The banker in the Italian Colony has usually been a little better off, and a little better educated in the old country than those who now come to him with their hard-earned savings. And because of the regional compactness and fraternity that exists in Italy, which is, by the way, now happily disappearing, the laborers troop to the banker who is a "paesano." The word "paesano" has been extended in meaning to cover also one of the same Province, a Province corresponding to one of our states. So it happens that the vast majority of the Italian banker's patrons come from the same Province. A Salernian banker has Salernian patrons, a Neapolitan banker, Neapolitan patrons, a Calabrian banker, Calabrian patrons, a Sicilian banker, Sicilian patrons.

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The bank of which this witness is the head is a small thing. How farfetched to suppose that the man is right in his statement that people from all over Italy come to his bank. Three questions are enough to expose the fact that again the witness is inaccurate and reckless, if, indeed, he is not knowingly swearing falsely to make a strong case against the defendant. Now all this has not taken up a great deal of time. In three minutes the witness has been shown to be unreliable. Could this have been done if the cross-examiner had been a German, a Jew, an Irishman?

Let me briefly illustrate again. The defendant is suspected of having committed the crime of robbery. He is searched for during weeks. Detectives at last arrest him in an Italian cafe and "pasticceria"—a cake bakery and confectionery place. Evidence is brought out, during the course of the trial, concerning the kind of place this "Cafe" is, the purpose of the prosecution being to insinuate that "cafes" are disreputable places. "What is it but a gambling dive? What do people do there? They drink, they gamble, they concoct horrible plans. Saloon! A great deal worse than a saloon. A hang-out for criminals. An abomination and a snare for the unwary. That's what it is. All in all, a most infernal den."

The character of "cafes" in general and of the cafe in question is brought out during the trial, and in the summing up the jurymen are asked whether they have ever gone into the Italian quarter and seen how the people there live. The cafe corresponds to the English coffee-house of the 18th century. The coffee-house was the resort of the most respectable and reputable people. There Lord Chancellors held forth, there embryonic Lord Thurlow met all comers in debate. There Dr. Johnson roared, there scientists, and members of Parliament, and judges and barristers and solicitors, and doctors and literary men congregated and clashed wits. There was a real feast of reason and a flow of soul. The inclination of the Italian, fostered by his marvelous climate, to the sensations of the *dolce far niente* spirit, to the enjoyment of life, in all its highways and byways, and the pleasure he finds in talking himself and hearing others talk make him go to the coffee-house, and live a full, round life. Infernal den! Isn't it?

For the purpose of illustrating a previous point in my plan I have gone to a subsequent stage of the proceedings in the progress of the immigrant from liberty to imprisonment. Let us return. Let us assume that a lawyer has been assigned, and that the case has been put upon the calendar. The defendant may have witnesses to prove

his innocence, or, at least, to help him a little. How is he going to get them? Who is going after them? Suppose, as is often the case, the immigrant has no relatives, and no friends, who will take a deep, and to them financially costly interest in him, how is he to manage? The lawyer is not getting paid. The assignment has been forced upon him. He doesn't want it. Surely he has enough to do to scrape together a living, of whatever kind it be, to pay no attention to the "free case." He knows how much trouble the case is going to give him. He knows how many times he will have to answer "ready" before the case actually comes to trial. He knows very well how many hours he will have to throw away waiting in Court for the pleasure of the Assistant District Attorney. Well, but he may have been paid something; he is a constant practitioner in the Criminal Courts; he is there every day, and every moment of the day, anyhow, and, what is more, he has agents who know how to draw blood from what appears to be a stone. Say, then, he has obtained \$50, \$100. Can't he send his emissaries, his steerers to look up the evidence and bring down the witnesses?

Perfectly logical and perfectly natural this reasoning. But also perfectly naive. There is more in Heaven and Earth than is dreamt of in your philosophy, Horatio. If witnesses come one day they won't come the next. And if the runner goes for them once he won't go twice or thrice, or four times or five or ten.

Yes, it is not so easy to get to trial. You are dependent upon the whim of the District Attorney in charge of the case. There are, say, ten cases on the calendar for one day. In seven of them the prosecution and the defense answer "ready." Those seven must be ready, although only one or, at most, two will be tried. But which will come first and which second and which third, and fourth, and seventh? No man knows. You may be first on the calendar but the seventh case may be called. How is that done, and why?

Ask the District Attorney. He juggles the calendar as he pleases. He can keep you there till the crack of doom. He suits his own convenience. Very rarely is remonstrance made to the judge. You get little help from him, and little sympathy. What does any one care for you? Have you been paid? Well? If you have been given \$50 you can surely devote ten days to Court waiting for your case to come on for trial. What are you to Hecuba, or what is Hecuba to you? And if you haven't been paid, why, then it's your business to be in Court just the same—your business to be there morning, noon and afternoon, to be there at the call of the calendar to say "ready,"

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though you have already said it six times, to be there while a case is going on, and when the next one is put on. While the case is going on? Yes, unless you want to take your chances. A trial may halt at any moment—a plea of guilty, the withdrawal of a juror, the failure of an important witness to appear—anything may happen to end the trial abruptly and the next case may be yours.

"Mr. Snodgrass, the attorney for the defendant, John Stem." No answer. He has gone out for a few moments for a breath of fresh air. "Next case," calls out the Judge. Or worse, "Mr. Farmer, defend the prisoner." Mr. Farmer enters upon his duties with all the dense ignorance of an inhabitant of Jupiter, and straightway the ball is flying afast. "One strike, two strikes. Foul ball—three strikes—and out!"

Theoretically, any defendant may have compulsory process served in his behalf. The Code provides that any peace officer may serve the subpoena. That looks perfectly simple and perfectly feasible. But what are the actual hard facts? The peace officer will serve the subpoena if you pay him—but if you don't he will not. Go to the Station House and say you would like to have a subpoena served upon John Doe who lives in that district. You'll be lucky if your request is heeded by the Lieutenant behind the desk. If by chance, or by fear, it is heeded, then the policeman will go out and come back—without having served the summons. He will do that, if you don't give him a little tip of a dollar or so to wet his parched lips with. You know, or ought to know that peace officers are there to walk the streets and lock up whom they dislike, or whomever commits a crime, real or alleged. They are not there to help in the protection of the innocent without means.

THE ASSISTANT DISTRICT ATTORNEYS AND PLEAS OF GUILTY.

"Bargains, bargains! Who wants a bargain?" Is this a vendor of merchandise? No. An Assistant District Attorney. "What are his bargains?" Plead guilty and get off with a lighter sentence. "How many times has the District Attorney asked this man or his lawyer for him, if he wants to plead guilty?" "A dozen times." "Why is he so insistent? Why is he so interested in that poor man?" "He isn't interested. He doesn't care a straw for that man. He wants to get rid of business. He wants to be able to say, 'I had twenty cases this month. I got fifteen pleas of guilty and four convictions. That's good, isn't it? I've lost only one case.'" "Does he care to know if the defendant whom he importunes to plead guilty is actually guilty?"

Of course not. How are you going to impress him with the idea that your client is innocent. He laughs and sneers at all defenses. Isn't your client at the prisoner's bar? Well, that's enough to prejudice his case. He insists upon your client's pleading guilty,

but if you should ask him to recommend the discharge of the prisoner for insufficient evidence you would be a traitor to law and order, and a disrupter of society. He makes no distinctions. All horses are of the same color. You reveal to him your case in the hope that he will be moved to bestir himself the way you want him to, but your reward is a renewal the following day of the never-ending question: "Why doesn't your man plead guilty?"

Now, there are many occasions upon which it would be cruel and criminal on the part of the lawyer not to advise his client to plead guilty. And this irrespective of whether the client is guilty or not. There is here a delicate question is casuistry. But I usually get out of it in this wise. I present the situation as best I can to my client. I tell him how slim, under the given circumstances, his chances are. He may be innocent. But if he goes to trial, ninety-nine chances out of a hundred he will be convicted. The reasons are various and multitudinous. But the practised mind can at a glance see the utter hopelessness of going to trial with the expectation of obtaining an acquittal. If he is convicted he will as sure as he lives go to prison for ten years. This judge is severe, and he will have no mercy. If he pleads guilty to the charge in the indictment or to a lighter crime or a lesser degree of the same crime, the judge will give him a light term. Now, after this outline of conditions, I leave the matter for the solitary consideration of the client.

There are, therefore, strong cases against a client, which will almost inevitably lead to catastrophic results for him, and there are weak cases against him which in spite of their intrinsic weakness will, notwithstanding, conduce to the same unfortunate termination. In these cases it is the part of mercy for the District Attorney to ask for a plea of guilty. But there are also many other cases in which it is the part of the inquisitor to ask for pleas of guilty and the part of an inhuman wretch to press the matter for days. The District Attorney ought to know in these cases that he has not a strong case, that the testimony upon which he bases the prosecution is slim and untrustworthy. And, above all, he should not make misleading statements, concerning his side of the case. Upon hearing that the prosecutor has four witnesses to a burglary or an assault the defendant's counsel pauses. Upon seeing the case through in Court and beholding only one witness who testifies to the assault or the burglary and three or four other witnesses who testify not to what the prosecutor said they were going to testify to, but to other matters and in circum-

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stantial corroboration only, the counsel for the prisoner has his faith a little shaken.

What would you say if you were confronted with this situation? You are the attorney for a man who, so far as your investigation goes, seems to be innocent of the crime with which he stands charged. You have interviewed the complainant and the other witnesses against the defendant and you are sure there is nothing at all in what they say which inculcates your client. You have, moreover, the minutes before the magistrate. These do not show anything inculpatory. The magistrate has held the defendant as a matter of course. You see the District Attorney come to you five, six, seven, ten times—every morning when you appear to answer ready—and he keeps on pestering you. Your client is charged with assault in the first and second degrees. "Take a plea of assault in the third degree," says the Prosecutor. "Let us get rid of this case. The punishment is small and the sentence will be light." If you are green, you really begin to feel embarrassed; you begin to believe you are the culprit yourself, even though you have told your client that if he had committed the robbery, or the assault, or the burglary he had better say so and be done with it. You feel that you are looked upon askance. It is your fault that the case is coming to trial. The camel labors with the heaviest load, and even the wolf dies in silence. You have patience and you wait, trembling for the result and quivering because of the nefarious part you are playing to bring it about. The poet-philosopher says that to bear is to conquer our fate. You bear, and you go once more to your client and try to get from him the truth about the whole affair. You have a stirring experience. Your client is aroused, vigorously protests his innocence, and tells you that, come what may, he will not say what is not so. You are aroused yourself. You feel now, if you had not felt before, that the gravest responsibility rests upon you to get out of the prosecutor's clutches, this man who is manifestly in every tone of his voice, in every movement of his body revealing his innocence. You go back determined to fight the fight to the bitter end. Your case has been on now twelve times. That means that you have come to Court twelve days, and have spent almost every hour of the Court day waiting for your case to be tried—unless you have been one of the favored few whose cases are put on when these please to have them put on. It means that your client has been in prison these six or eight weeks, that he has lost his job, and that it will be hard, as things go in New York, to find another, that he and his relatives and friends have been on the rack, and that you have

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been worried to death. But now, at last, you think the case is going to be tried, and lo, and behold! the District Attorney says to the Court he recommends the discharge of the prisoner because he believes he cannot get sufficient evidence to convict. He has had the same evidence all along. He has been expecting more, more. But he has just the same asked, and asked and asked counsel to plead his client guilty.

THE ATTITUDE OF THE BENCH.

Even the Judges are hungry for convictions. The most flagrant instances are thrust upon your notice. Some of the judges at General Sessions are veritable pursuers of prisoners. The very fact that men come to the prisoner's bar is proof of their guilt, or at least, of their disreputable characters. The judges keep up telling the Juries that an indictment is only a charge, but their bearing, their words, their general attitude, every tone of the voice, every movement of the body indicates in the strongest fashion their bias against the poor man at the bar. Everything is rushed in pell-mell fashion. You have not time to breathe. Your direct examination is lengthy and dwells on immaterial matters, your cross-examination does not stick to the direct examination, you repeat questions, you ask the witness to repeat answers, your summing up has taken up ten minutes, you have already exceeded your time limit by five minutes. Your remarks are out of order, your inferences are gratuitous. After the charge the jurymen's crucial question, which the Judge had not touched because the evidence was in favor of the defendant is turned aside and the jurymen reproved for asking and arguing questions in Court. Your recollection of the evidence is at fault. In short, what is the use of defending a man? The opinion of a Judge usually has great weight with a raw jury, and also with a hardened one: bias from his lips prevails with double sway. The displeasure of the Emperor caused by the bringing in of a verdict contrary to his implied wishes is to be feared. I have often heard Jurymen say: "What could we do? The Judge wanted us to convict. We didn't want to get a calling down."

Barbarous treatment this—and cowardly. Why don't you stand forth and say: "I take this case from the consideration of the jury. What of it that I have no authority to convict but only to dismiss disreputable characters. The judges keep on telling Juries that on the indictment, or to direct a verdict, what of it that the exclusive province of the jury lies in finding out the facts and, if they decide

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them unfavorably to the defendant, in convicting the prisoner. I shall take authority I have not. I shall be Judge and defender and jury all rolled in one." This proceeding would be at least frank. We could more easily see where some people stand. But insinuations, and sarcastic remarks, which on the record appear perfectly harmless, nods and sneers which cannot appear on the record, movements of all sorts derogatory to the defendant—these cannot be so easily proved to an appellate court. True, one of these Judges has been severely reprimanded for acting the part of an outrageous and tempestuous prosecutor, instead of a quiet, dignified, impartial judge. What I say is not at all comparable in strength of language to what an Appellate Court of five Judges has said of him. But some people will still consider my picture overdrawn. I have witnessed outrageous proceedings over and over again. And it would have been useless to protest. At least, none of us has ever been brave enough to stand up as Richard Henry Dana did in the abolition days when a negro was taken to a Massachusetts Court in chains and proceedings were going on which made law sink and die, and demand fair treatment for a prisoner. The bar has sunk low. We have no backbone, we have no independence. We cringe and fawn and crook the knee. We, too, do not like to incur the displeasure of the Court. Oh! shades of Erskine, and of John Scott. There is no one big enough to raise his voice. We are all striplings without name and without prestige. And those of us who are older have by constant submission become hardened slaves.

Let me give you my notes taken on one occasion when the prisoner was taken to the bar and asked if he wanted to plead guilty. That same man had been before the same judge that very morning at eleven, and now at half past twelve he is once more hailed before His Honor and asked whether he wants to plead guilty.

"Do you know what you're charged with?" says His Honor. "I have a faint idea." "Well, don't you know you have committed forgery?" "I do not. I never did." "What! Be careful now. You can't bluff me. I'm no spring chicken. You may get the jury to believe that, but you can't fool me. Didn't you put your employer's name on that letter?" "Yes, Sir." "Well, isn't that enough?" "Your Honor, I didn't know I ought not to have done it. I had done it before in this place, and at the place where I worked first." "Now, tell the truth," says His Distinguished Honor, menacingly, "tell the truth. If you go to trial and cause the County a great deal of expense I'll give you the limit. Do you know how much that is?" "No, sir." "Well, that's fifteen years. If you plead guilty, though, I shall be very lenient with you. You'll get off with a light sentence. You can go and get drunk sooner. You know there isn't any booze in State's Prison. The District Attorney tells me that five bottles of whiskey were found near your drawer. Is that right?" "No, sir. I didn't have

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any, whiskey. I drink sometimes, but not during business hours." "Oh! then, if you didn't have any whiskey, you were going to get some with the money you got?" "No, sir. I didn't use any money I got. I gave it to my employer—every cent of it. He's got it, and he knows it." "Now don't be stupid; don't be foolish. You can't fool me, and 90,000,000 of people besides. Did you sign your employer's name, Yes or No."

The prisoner hesitates. He is aware he can not answer that question yes or no. There are necessary amplifications that would modify and transform the answer. Finally, he says:

"Yes, sir." "Did you know you were doing wrong?" "No, sir. I had signed before with my employer's consent. I thought I had a perfect right to do it. He told me once. He gave me his consent when I signed before. I didn't know it was necessary to get it then after I had signed at least ten times before and my employer had not objected and known of my act." "Did you sign without your employer's consent?" This spoken in a loud, raucous, over-mastering manner.

Once more a little hesitation. Then in a helpless resignation: "Yes, sir." "Well, that's forgery. You did it without your employer's consent. That's all there is to it. I ask you again. What do you plead?" "Well, I plead guilty." "I don't want you to plead guilty. You know whether you are guilty or not. Are you guilty?" In heartrending exhaustion and despair: "Yes, sir."

The Third Degree in open Court—the inquisition with subtle instruments of torture. A confession drawn out by hope of reward and by fear of punishment. Is this man guilty? Does he plead guilty to unburden his soul, or to escape the judicial rack? The Star Chamber in public!

The defendant here was a shabby, insignificant looking young man of about twenty-seven, and he spoke very broken English. He had no collar, a dirty shirt, baggy trousers, old and worn, soiled jacket, unkempt hair and listless bearing.

This very Judge is always crying out at the top of his voice, when a defending attorney does not happen to be present at the call of his case: "Why don't you bring this to the attention of the Bar Association?"

A little sympathy at least for the defending attorney is aroused when the Judge asks the prisoner if he has paid anything to his lawyer and he answers, "No," and when on further questioning it is discov-

*While these sheets are going to press an investigation into the Judges of General Sessions is in progress. Charges have been made by the Commissioners of Police and of accounts that the Judges have, for political reasons, suspended sentences upon notorious criminals, and that they have been arbitrary in their methods. The Grievance Committee of the Bar Association of New York City is investigating, it is reported in the newspapers, fifty cases of favoritism and ill-treatment on the part of Judges to prisoners. All the five Judges, without exception, it is said, are under a shadow.

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cred that the case has been on the calendar ten times, ten days, and the defending attorney had always before that day been ready and prompt.

This is an extreme case. But without doubt a more moderate procedure detrimental to the defendant is carried on generally. If your client is a banker, if he has good clothes on, if he has the appearance of what for a better term we may call external respectability, you can stretch out your trial to interminable lengths. You can argue with the judge, and he will listen, you can examine and re-examine and recall, and re-recall and cross-examine to your heart's content upon any matter you please, in any way you please, taking up as much "precious time of the County," as the judicial phrase is, as you have a mind to take up. The clothes of the man behind the bar, and his rank in life are determinants of long or short trials.

Now, there is no need for long trials. Most trials can be through and done with in a few days. Dean Wigmore is perfectly right when he says that one of the three great principles of enlightened trial procedure is control of the course of the trial by the judge and wide discretion reposed in him. With this I heartily concur. It is the abuse of discretion that I denounce. Judges should have more power to direct and control the course of trials. The slow-moving cases are snail-paced just because the judges haven't backbone enough to take an active hand in the proceedings. They have become figureheads, or, at most, colorless forms. They rule on the admissibility of evidence, but at that point their sacred precincts terminate. Over facts they have neither control, nor power of guidance. According to a very bad custom they must not review the evidence in the case, in their charge for fear they may express some opinion on the weight and the credibility of certain of it, and thus run the risk of reversal on appeal. I do not condemn discretionary power to guide the way of the trial and to limit the evidence to the issue, to sum up the evidence fairly and fully, and to express opinions concerning the weight and the credibility of evidence, but riot-running whim and caprice. The situation today is one of extremes. There are whimsical, capricious judges, and there are colorless, invertebrate judges. Furthermore, what I denounce is the unequal treatment these same invertebrates give to different defendants. Change the environment of the prisoner and his atmosphere changes; change his atmosphere and the attitude of the Bench toward him and everything directly or indirectly connected with him changes.

Judges want others to be on time. Are they? Often do they

keep lawyers and witnesses waiting. Why haven't they consideration for others who once in a while are late?

And their hours! Half past ten till one in the afternoon, and from two o'clock till four. The first part of the day hurries away in the sentencing of prisoners who have on a previous day been convicted or have pleaded guilty. Sentence is almost universally not passed on the same day as the pleading of guilty by a defendant or the giving of an adverse verdict by the jury. Three days to a week are given during which the defendant may present for the consideration of the Court any matters in his favor tending to the lightening of the prospective sentence, and during which the probation officer may investigate and report upon mitigating or aggravating circumstances. One to two hours, then, are devoted to dispatching prisoners to the several jails and reformatories. What can be done in the remaining two and a half hours?

The reasons one Judge of General Sessions recently gave for the short hours of Court are truly enlightening. He said: "The hours are as they are for three reasons: first, the Court attendants are old and feeble; and, since they are required to stand during the whole session, they cannot bear the burden; second, lawyers have other business to do, and this they may transact before half past ten and after four; and third, Court work is very straining upon the Court and especially upon the lawyers." Now, as for the first reason it may be said that no rule except an arbitrary and brutal rule of the Judges themselves, requires the attendants to stand during the whole time the Court is in session. As for the second reason it may be answered that this tender consideration for the welfare of lawyers is truly revelatory and startling in its kindness. Furthermore, the lawyers themselves would prefer a million times to go to court at half past nine and leave at five in the afternoon. This would give six and one-half hours of Court work instead of four and a half, and in this way they might get rid of their cases sooner, with the saving of an immense amount of time. As it is now, because of the little work that is done, they have to come to Court over and over again. As for the third reason, the strain is an imaginary one. Any one who cannot stand five or six hours of Court work ought not to do any trial work at all. The cases that are really straining and nerve-exhausting are very few and far between. The vast majority of them proceed in humdrum, even, fashion. You don't in these instances feel any tug at your heart strings—any tug, I mean, that anyone whose business it is to defend ought properly to feel in order to do his work in the right way.

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THE ATTITUDE OF THE ASSISTANT DISTRICT ATTORNEY.

The District Attorney's attitude toward the prisoner is that of a prosecutor. He does not for one moment before or during the trial consider his functions to be quasi-judicial. He believes he is in duty bound to present all the evidence that is damaging to the defendant, and to withhold all the evidence that is favorable to him. He is always skeptical, always sneering at the defense of the prisoner. He is firmly convinced that whoever comes to the bar is a wild animal that has been caught in a trap and is now only waiting and planning to make itself free. Of course, you may expect a little hardening of the heart. Of course, a man can't prosecute so many people and see so many convictions and pleas of guilty without taking lots of things that happen in Court with indifference. But the nonchalance, the cold bloodedness, of the prosecutor, the noncurancy for the prisoner, the looking upon him as a bud to be crushed, rather than as a potential flower to be fostered and nurtured—these qualities you do not expect in a District Attorney no matter how long he has been acting as prosecutor.

THE ATTITUDE OF THE JURY.

The attitude of the jury! It remains an attitude of open mindedness and sympathy for about a day. And then is presented to you a wide unbounded prospect of the opposite conditions of mind. What produces this immediate revolutionary change? The first day several defendants have pleaded guilty and maybe several others have been sentenced. The next day, perhaps the same day, a jury brings in a verdict of guilty. This is a cue to action. The jurors suddenly swell up with courage, and sink in sympathy. A long line of poorly dressed, underfed, undersized, half-human individuals files past. The jurymen catch the idea that only guilty men are here and that only people who dress like them and look and act like them are felons. All others belong in the court, the camp, the grove. So they get the feeling when they enter the jury box that no debt immense of endless responsibility do they owe to these creatures who are gray and ghastly, withering ere their time. They are carcasses, brought into the Court Room to be sped on to their burying grounds after the necessary formalities of the funeral have been attended to. No sparkles flash from their eyes, no sighs come from their breasts, no secret dread and inward horror gnaw their vitals, no feeling of shame stirs their being, no knife can pierce their hearts, no dagger can cause them pain, no catapult can shatter their lives! What are these objects, these specks, of still life?

Have they reason, organs, dimensions, passions? Are they warmed and cooled by the same winter and summer as we are? If you prick them do they feel, and if you wrong them do they resent?

To this pale and anemic condition of mind must be added the further facts that jurymen are usually stupid, smug, conventional and uninformed, narrow as the English Channel, without capacity to grasp crucial ideas, lacking in ability to follow an argument, or to understand part of it, appallingly incompetent to remember evidence that is vital, and exceedingly capacious in remembering immaterial matters; untrained to sift the weighty matter from the light; obstinate, and, paradoxical as it may seem, fond of compromise, even though in the compromise they are branding a man with the mark of felon, when if they were not so weak-kneed and dumb driven and held firm to their opinion, they would bring in a disagreement and save the defendant from a life of open or veiled persecution by organized society—they are sworn to uphold the law as it is. The law requires twelve contrary votes to convict. Whether we or they believe that this ought to be or ought not to be, and whether a verdict might not be brought in by a majority, or three quarters has nothing to do with the question. All must, under our present law, find the defendant guilty beyond a reasonable doubt. What would your feeling be in this situation: one of the highly material matters in the case of the prosecution is the proving that the defendant was left-handed, since the blow in this robbery was struck with the left hand. The vast majority of people are right-handed. The prosecution does not introduce any evidence upon the point. The jury are up a tree; the fact disturbs them a great deal. The other evidence is not so strong, and if you take out of the case the fact that the defendant was left-handed, as you must do, since there is not evidence as to that, and the probabilities are many times to one against the existence of it, has the prosecution proved its case beyond a reasonable doubt? Yet a jury will come in with a verdict of guilty, and will look with satisfaction upon their handiwork.

Some of the weakness that defenders find in the jury box is due not to the general ignorance of the jurymen, but, indeed, to the particular ignorance of facts about the case which cannot be brought out on the trial, but which, if they were known, would color the circumstances and suffuse them with a much stronger hue. But almost universally the case is decided as it is because of the crass darkness of their minds. To talk to jurymen before whom you have just tried a case is an education. You lose your case. The foreman has just

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opened his mouth and said "guilty." You feel bent and broken in spirit. You walk out of the Court Room with grief unmedicinal. You cannot see how intelligent, rational beings could come to the conclusion these bipeds have come to. You are in the Hall. You find yourself amid a croaking choir of voices. The jury are speaking to you.

"You did very well. We gave you a square deal. We looked at all sides of the case. We gave you a good run for your money." And then, horrors, upon horror's head accumulate. Two minutes' discussion betrays the absolute disregard of your cross-examination which your fellows in the law have complimented you upon as having being damaging to the prosecution to the last degree, betrays the complacent lingering upon the unsubstantiated testimony of the complainant, the complete forgetfulness of vital matters for your side, the utter and plenary misconception of the theory of your defense.

Here is a man, evidently a hard working foreigner. There is little about him that to a sane eye appears dangerous. He is before a jury and is accused of robbery. There is only one witness for the prosecution, a boy of ten. If this child is not sworn the prosecution will fail. A statement not under oath, uncorroborated by testimony sworn to, cannot under our law, convict. The child is examined by the Judge. He is asked a few simple questions which the child answers lamely. The defendant's lawyer takes him in hand and soon reveals to the listeners the incompetence of the child. Nevertheless, the child is sworn and his testimony taken. On cross-examination, the boy is handled with velvet gloves. The cross-examination is kind and gentle, wooing and sympathetic. There is no bull-doing, no brow beating, no raw head and bloody bones. The child tells another story and supplies circumstantial proof that he could not have seen the crime committed, as he had said he did. The defense is an alibi. Three witnesses are brought forward to prove that at the time of the alleged crime the defendant was at another place. In addition, two character witnesses are called, one of whom has employed the defendant continuously for the past two years. The defendant has taken the stand and denied his connection with the alleged crime. The witnesses for the defense have remained unshaken. The jury come in with a verdict of guilty. By what process they have come to that it is interesting to know.

"Just as soon as we went in we took the first ballot. It was six to six. Then we talked it over and talked it over. You got a square deal. We looked at all sides. I was for you. I stuck out till the end. But we believed that boy."

"But how could you? You saw how lacking in power of observation he was, and how wanting in intelligence. It was dark. The boy was, according to his own statement, not on cross-examination, because you might then say that a cross-examiner can get a witness to utter what the former pleases, but on direct examination, sixty feet away and it was proved there were no lights. Isn't that so?" "Yes." "And the boy had never seen the defendant before? Is that so?" "Yes." "Well, how could you have believed the boy, no matter how honest and well meaning you may have thought him? And why did you consider unreliable the testimony of those witnesses called to prove an alibi? Their testimony was unshaken." "Yes, but we didn't think of the defense, we came to the verdict by way of the prosecution—we believed the boy. You can get a witness, and especially a boy, to say what you please. But he seemed to be telling the truth on direct examination."

Further argument with the entertainers of such unsound, overweening phantasies, possessors of crooked reasoning powers and inhabitants of the waters of Lethe is, of course, useless.

Change the prisoner. An American is before a jury of his peers charged with having shot and killed and robbed a jeweler of \$50,000 worth of diamonds. The whole cumbersome machinery of the law is put in motion. The man is out on bail for a long time. He has been in a good position to prepare his case. At last the case comes on for trial. The prosecution puts on three witnesses, grown up men, of substantial rank in life, who testify that they saw the defendant shoot the jeweler, jump into a taxicab and run away. Other witnesses are brought to say that a little while before the murder the defendant was seen in the neighborhood. The defense is an alibi. A saloonkeeper, and his brother, who acted as bartender, and one or two more rowdies, who, according to their own testimony, hang about the saloon every night of the year, are shown forward to say that at about a certain time the defendant was in that saloon. On cross-examination these witnesses cannot recollect the time within two hours, of the alleged killing, do not know whether the defendant was in the saloon all evening, or there only part of the time, do not know whether he was there before the time of the shooting, or after that time. The defendant does not take the stand. This in itself would, if he were an immigrant, be deadly evidence that he was guilty. The judge may repeat till his lungs ache that the jury are not to infer anything against the defendant, if he has not taken the stand, and that the prosecution has the burden of proving beyond a reasonable doubt the guilt of the defendant, but the jury will always want the stranger-prisoner to prove his innocence by taking the stand and subjecting himself to cross-examination.

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In this case, though, the jury does not hesitate. "Not guilty." Now, some one may say: "They do this because the crime is punishable with death. No wonder they pause before an adverse verdict. But if the man at the prisoner's bar were a foreigner the jury would not consider that at all. His life and his liberty are cheap. Who cares for him. And, moreover, if the jury found the native guilty they would have it in their power also to find him guilty of a lower degree of crime, but they do not do it."

Change the prisoner again. Two men, owners of a factory which, from the evidence advanced at the trial, no less but more than the facts which had been current for months, in the newspapers, was a death trap—badly managed and run in violation of the Factory Law, are on trial for manslaughter in that a fire had occurred in their factory, and, the indictment ran, a certain Mamie Mass had been burnt, through the negligence of the defendants. The trial drags on for weeks. The prosecution brings witness upon witness to testify to the fact of negligence on the part of the defendants. The defense denies and adduces testimony. The Judge is particular in his charge to point out the importance of unerringly bringing home to the defendants the fact of knowledge of the flagrant, and inhuman violation of law with which the defendants are charged. However beastly these men may have been shown to be, they have money. Everything is made smooth and solemn for them, and rough for the people. The jury convict? Oh, no! The evidence has been contradictory. One cannot be sure the defendants knew. How do we, the jurymen, know they knew? Are we going to take such a grave responsibility upon our shoulders as to send these men to prison? Are we going to stamp these men with the mark of infamy? Better that one hundred guilty people escape than that one innocent man suffer.

If the defendant had been an immigrant the jury would have had no compunctions in sending him to prison or to the electric chair. They would have had no pangs in branding him with the sign of felon. Who is he? Just a "wop." They would have discoursed loudly and eloquently—after their fashion—on the importance of maintaining law and order, the necessity of giving the defendant and those likewise inclined a well-merited lesson. You often hear jurymen say: "Well, we thought he was justified in striking. It was a clear case of self-defense. But we wanted to give that class a lesson." How about giving as much needed lessons to immigrant baiters, naggers, and worryers, or to wealthy breakers of the plain law—natives of this country, or powerful naturalized or unnaturalized Croesuses.

Jurymen themselves, moreover, are unacquainted with our laws, our customs, our institutions. They themselves have only recently come or if they have been here for some time they have lived apart from American life in their colonies, or among people like them in race, in traditions. It may seem curious to a man bred in a small town or in the country to learn that a person may come from abroad and remain in the City of New York for twenty, for thirty years, and at the end of that time be almost as foreign in thought and in habits as he was the day he came to us. How does he get on the Jury? How does it come about that he is chosen by the Commissioner of Jurors? Money is the pole star of the Commissioner. Small shop keepers, business men are called. It is so easy to become a flourishing business man, or a blooming store-keeper in New York City. But what do these same men know of our American life? Are they imbued with American ideals or ideas? Have they even a glimmering of what our democracy is?

Now, by a most curious, though perfectly well known, psychologic fact these men who, to all intents and purposes are themselves foreigners, immigrants, lay a most heavy hand upon their more unsuccessful brothers who come before them to be judged by them. And, on the contrary, when one who has apparently come to be American—the jury judging him superficially by his looks—appears before this box of immigrants who are for the moment acting as judges of facts, and as arbiters of the lives, the fortunes and the honor of their racial and mental kin—and of others their infinite superiors—the men of iron hands suddenly put on robes of appreciation, of sympathy, of nauseating mushiness. O jurymen of New York County, verily are you, in the words of Byron, a marvel and a show.

What can you expect of a jury when it is made up of the kind of people we select? The provisions of the Code exempt many people who ought to be made to serve. A glance at the New York Code, for instance, will show that everybody who has any sense at all and any education may, if he chooses, escape service. Is not this a fine situation? Now, add to this the fact that the people who are, under the Code, exempt, take advantage of the privilege. Do you find any lawyers, either in active practise or retired, on the jury? Do you find any doctors upon the jury, any engineers, or any teachers, architects, contractors, reporters, editors? The people who serve on the jury are on a dead level of mental inferiority. As I have already said, they are small shop keepers, and clerks, with very little intelligence, very little education, very little learning, and very little experience of life. It is

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from the people who are not exempt that the prosecuting and the defending lawyers have to choose their juries. Now, a penchant of defending attorneys, especially those of the meaner sort, is to get upon the jury the stupidest men possible, and this is most true when the attorneys have a bad case. The more ignorant the jury is, the more easily it is imposed upon. Imagine the situation then: the defending attorney picking out the dullest of all; the prosecuting attorney indifferent, for the most part, as to who is selected. For him the first twelve men would do. He tries so many cases, and they come clattering upon the heels of one another so fast that trials come to be routine things. Furthermore, time is an essential, and it is very necessary to try many cases in a very short while. So that except in murder trials and in trials the newspapers are interested in, the first twelve men called are satisfactory to the district attorney, even though the district attorney has not looked at them.

The coming of the public defender would prevent the sorting out of the least capable jurors, and would facilitate getting at least a random jury, which would be made up of people, some less intelligent, and some more intelligent.

INTERPRETERS.

Sound the trumpet, beat the drums. He comes. He comes! Behold the interpreter. He is the bane of the immigrant. It is bad enough not to be able to make yourself understood, but, verily, in many cases it is much better not to be understood at all than to be misunderstood. In a large experience covering every Court in Manhattan, and almost every Court outside of that Borough and within the Greater City of New York, I have met just two—in Manhattan—who were a delight to listen to. Their translation was faithful and their language was admirable. These men had marvelous memories so that they could allow a man to talk for two and three and five minutes, as circumstances in the lower courts where work is done rapidly demanded, and then would retell almost to the letter everything that was said. The interpreter in the New York Courts "speaks" four or five languages. No wonder he does not know any language. He very rarely speaks English well enough to make you understand what he says, and he seldom understands enough of the language he is attempting to translate to be able, even though he were capable of expressing himself, to be properly impressed. In the case of an Italian defendant, such an interpreter who is not himself Italian, is, to

use the words of Lord Denman in regard to another matter, a delusion, a mockery, and a snare.

The harm that these interpreters do is incalculable. Their words ought to be for a poor defendant an eternal April making all one emerald. Instead, their distortions are an eternal January, making all one white, and bringing gloom and sorrow to many a heart. Let me give you an example of the kind of thing that happens daily in the Courts. A man is on trial for assault. The defense is self defense. On direct examination the defendant has said that he struck the complaining witness twice—once on the hand, and once on the thigh. He is in agreement with the complainant. On cross-examination by the District Attorney this question is asked: "Where did you jab him?" The witness replies and illustrates by vivid gesticulation and by actually pointing to the parts affected—that he struck the complainant in the hand and in the thigh. The interpreter reports that the witness has said he struck once in the hand.

The Judge: "Why did you say to your lawyer that you had struck the complainant twice?" The attorney for the defense objects: the translation is not a true one.

The Judge: "Do you wish to say that the interpreter is incompetent?" There is no talking any more. You take your exception and you keep it—you can never go up on appeal with it. Your client hasn't the money.

What is it you see about the head of such a judge? A gilded halo hovering round decay.

The jury is impressed unfavorably with the defendant. Of course, the interpreter knows his business. He is a sworn officer of the Court, and he is disinterested. If he were not competent he would not be there. It never enters the benighted mind of a jury that possibly the "interpreter" got his job through pull. The defendant, of course, said "once" to the cross-examiner and "twice" to the direct examiner. Now, during all this while the witness has not understood a word of the wrangling. What it is all about he can only wonder. When the cross-examination is finished the defendant is re-examined by his lawyer. Just one question is put: "Will you tell us where you struck the complainant?" Without the slightest hesitation the witness answers as before. Again, he is berated by the Judge. And the jury mark.

The man is convicted. Conversation with the jurymen discloses that the cause was the unreliability of the defendant's testimony. "He swore falsely on a material fact. How could we believe him?"

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There are a great many steerers who hang about the criminal courts. These men are so called because they direct cases into the offices with which they are connected. The lawyers for whom they work are men of loose character and limited intelligence, but of great practical ability for business and for handling men. Some of them are skilled in technical matters of the law, and then the client, although he has been squeezed dry, gets at least the benefit of valuable technical knowledge. But as a rule the lawyers are incompetent in every way, and money is given up by the poor client without any adequate return. The steerers hang about the Magistrate's Court, the Court of Special Sessions, the Court of General Sessions and the prison. It is now more difficult than it formerly was for these steerers to pick up cases, but they still ply their trade and make a good deal of money by it. Just as soon as they spy a man who seems to be ignorant of our ways, and who has nobody to defend him, these steerers get into conversation with him and convince him or his friends that the best thing he can do is to get the lawyer to whom the steerers will recommend him. These men are very clever in picking up trade, and they would, if they saved their money, accumulate thousands of dollars in a very short time. But they spend their money just as fast as they make it and so every day they are just as poor as they were the day before, and just as determined as ever to make more money and to spend it in dissipation and in high life. This fact increases the difficult problem. These men are very tenacious of their job and they find all sorts of means by which to retain it. Usually the lawyer sees nothing at all of the client until the money has been passed over. The steerer arranges the amount of money that is to be paid by the client, convinces the client or persuades him, or both, that the sum of money is small, that the lawyer will take care of his business, and that he is the greatest lawyer in the universe. He has done wonders. Only the other day he freed a murderer against whom there was a strong case. Another day he let slip out of the coils of the law a man who committed extortion, and another who had committed burglary, and another who had committed robbery. This lawyer is invariably successful in everything he undertakes to do. What he has done in the past he will do in this particular case. The ways of the steerer are very ingratiating, and he influences the client or his friends to part with more money than he or they can afford. Then the money is given through the steerer to the lawyer. Some lawyers do not trust their steerers; they take the money direct from their clients. Others allow their steerers to do it all and so have no

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relations with their clients. They do not even know what the case of the client is from his own mouth; they get it from the steerer who is usually a person who, by birth, speaks the language of the client, and not the language of the lawyer. I have known of cases where the lawyer has come into court without knowing anything at all about the case of his client, either through direct conversation with him, or through conversation by means of an interpreter. And yet these lawyers are very common and they keep on piling up money for themselves, and misfortune for their clients,

Sometimes steerers are not connected with any particular office. They pick up their own cases and now go to this lawyer to try the case for them, and now to that. There are lots of hangers-on who are willing to try a robbery case for \$10 and others who are willing to try a murder case for \$15. The steerers get from one hundred to four hundred and five hundred dollars. I have been told of instances where steerers have got \$1,000 for murder cases. The lawyers they employed were the ordinary run of lawyers who were glad to receive twenty-five to fifty dollars.

The steerers used to be admitted into the prison, and there they used to carry on their operations to their hearts' content; but the halcyon days are almost entirely over, and now very few people are allowed to go in to pick up cases there.

The coming of the Public Defender would abolish these steerers.

It is a most interesting and instructive fact that in the Police Courts you will find representatives of the District Attorney. Isn't this a sad commentary upon our civilization? Money enough is found to send a District Attorney to the lowest criminal court, where thousands upon thousands of strangers are brought, to prosecute, and not a penny can be found for a defender to offer a word of comfort and a hand of assistance to the swarms that more than any others in our big community need it.

We do not in New York keep up with the extraordinarily rapid increase in population. Our courts are old—forty and fifty years behind the times, and the number of judges has remained almost the same for years. When an increase in the number has taken place, that increase has been slight—always inadequate to cope with the situation it was intended to meet. New York is a large town, and the larger the place, the more snail-paced the movement.

You wish to hear my panacea? I have none. My suggestions? First, Public Defenders, who will much better represent defendants, both because they would be more competent than defenders now are,

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and because of their capacity as public officers to be of invaluable service in setting the power of the County in motion to aid defendants in the collection of evidence, and with witnesses. Second: Larger staffs of District Attorneys and of Public Defenders. Third: Public Prosecutors and Public Defenders who understand the languages of the people who are brought before the courts. Fourth: Interpreters. Fifth: More and better Judges.

A CONTRIBUTION TO THE CATAMNESTIC STUDY OF THE JUVENILE OFFENDER.

BERNARD GLUECK, M. D.

Criminal Department, Government Hospital for the Insane.

The problems confronting the science of criminology are so well known and so generally agreed upon, that it seems almost superfluous to enter into an extensive discussion of them here. The entire question resolves itself into the well recognized truism, that we must gain a thorough insight into the personality of the criminal before we can hope to deal with him in a rational and effectual manner.

The revolution brought about in the science of criminology by the positivistic school of Italy has passed its acute stage and the reaction noted in all quarters is the result of the recognition of the danger of replacing pure reason by sentimentality, which the positivistic school carries with it. We all agree with Lacassagne that "every society has the criminals that it deserves" but we also must keep in mind that every society has the unalienable right to protect itself from the criminals that it has.

The constant increase of recidivism, however, is sufficient evidence that society does not properly take care of its criminals. The cause of this is well known. In the course of time we have come to appreciate the fact that little in the way of reformation can be done in the mature habitual criminal, and if anything is to be accomplished in the way of prevention of crime, we must direct our efforts in behalf of the juvenile offender, the future recidivist. Our studies must above all be concerned with the causes operative in the production of crime in the young and we must endeavor to gain a correct insight into that anomalous species of humanity which already in its earliest years of existence, manifests anti-social tendencies and traits. This work is now being carried on to some extent, especially in this country. In certain municipalities the judges of the juvenile courts have finally had their eyes opened to the fact that physicians, especially those trained in psychopathology, are a necessary adjunct to the juvenile court. I have only to call attention to the excellent work done in the Psychopathic Institute in connection with the Chicago Juvenile Court.

But in order that this work may bear fruit, it must be supplemented by thorough catamnestic studies of the juvenile offenders.

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This, I believe to be, the only rational way of approach to the problem. This will in time, I believe, furnish us data concerning the criminal which will enable us to evaluate in a correct manner the various traits and characteristics of the juvenile offender and thus enable us to render a correct prognosis in a given case. Once we shall reach a stage in the science of criminology when we shall dare to say of a given juvenile offender, as we now unhesitatingly say of the leper, "Here is a human being who will always be a danger to his fellow-man and, therefore, should be permanently isolated from his fellow-men," the problem of recidivism will be solved.

We cannot, however, arrive at a proper conception of the nature of the juvenile offender by merely studying a cross section of him at any given moment of his life. In order to understand man, especially abnormal man, we must study him in a longitudinal section; we must note his mood of reaction to experiences in every-day life, under all manner of conditions and circumstances; we must investigate the motives and desires which prompt his conduct; we must find out how effectually he adapts himself to the environment in which he happens to be placed and in how far he is able to modify the world about him so as to make it subservient to his needs and wants. The same problems which confront criminology today, psychiatry had to face some years ago. In order to be able rationally and scientifically to deal with the insane the psychiatrist found it essential to establish certain criteria which might enable him to tell with some degree of certainty what the future life of a given insane person will be. In the last analysis it is this very same thing which we are aiming to attain in our dealings with the criminal. The problem which is constantly before us in dealing with juvenile delinquency is what might be expected of the future life of the juvenile under consideration and what must be done towards directing his future into proper channels. So after all it should be our aim to establish certain criteria by means of which we should be able to render a proper prognosis. That we possess no such criteria at present can be denied by no one.

As I have already stated, psychiatry had to face the same problems. With the advent, however, of the Kraepelinian school these have in a great measure been solved. Kraepelin by studying the entire life history of his patients was able to show that certain disease pictures when studied in cross section may simulate one another very closely clinically and at the same time be of the most diverse significance prognostically. He further showed that certain acute psychotic disturbances are merely the outward expression of an underlying pro-

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gressive disorder and though the acute manifestations may disappear and leave no apparent trace behind them, the great majority of these individuals will spend the rest of their lives in institutions for the insane. By calling attention to certain symptom-complexes, which are especially characteristic of certain mental disorders, he gave us the means by which we are able at the present time to predict with a fair degree of certainty what the future life of a given patient will be. We can now tell without great fear of contradiction which of our patients are going to spend the rest of their lives in institutions.

Now, criminality is generally conceded to be an expression of a diseased personality and there is no reason why the same principles which served to advance our knowledge of psychiatry should not be employed here. It is with this object in view that the following cases are here reported. They concern the life histories of several individuals who started upon their criminal career at a very early period in life and it shall be our aim to find out in what respects, if any, these individuals simulate one another, whether it is justifiable to include them all in one group and whether the traits manifested by them may be considered as criteria illustrative of a definite type of criminal and of sufficient import to serve as a means of prognosis.

A. F., aged 31 years; admitted to the G. H. I. April 7, 1911. Father alcoholic; died of cancer of liver and stomach. Mother died of tuberculosis. One brother has been confined in the Gowanda State Hospital for the Insane the past five or six years; has always been an excessive alcoholic. One sister, aged forty-two, has tuberculosis. One of her children died of tuberculosis of the bones. Another sister is hyper-religious and eccentric.

Patient was born at Olean, New York, in 1871. He knows of nothing unusual attending his birth or childhood. He entered school at the age of six, and attended irregularly for six or seven years. He was usually older than the other children in his class, and was held back a year in the third and fourth grades. He left school at the age of fourteen, while in the fourth grade. He then worked a while in a shoe store, commencing at a salary of four dollars per week, and receiving six dollars per week at the time of his separation. As far as is known, he did his work well, as he was promoted during his stay there. Soon after commencing to earn money he began to indulge in alcoholics. He became intoxicated one day and set fire to a store, which resulted in the death of a human being. It did not take much at that time to make him drunk—two or three glasses of whiskey being sufficient. He does not know definitely why he set the place on fire; adding, "Perhaps I was drunk and did not know what I was doing and maybe I just wanted to see the fire. I always did like to see fires. Of course, I did not know that somebody was going to get burned to death." He is not certain whether he felt sorry for the deed, adding, "Why should I care? I didn't know the man that was burned. He was no relative or friend of mine; anyway, the people around there said he was no good, and that it served him right." He was sent to the Elmira Reformatory where he

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remained three years, when he was transferred to the New York State Hospital for Criminal Insane at Matteawan. He did not like the Reformatory a bit, they were nagging him all the time. He says it was like a deaf and dumb asylum; a fellow could not even talk when he wanted to, and if he did he was paddled for it. The paddling didn't make him behave, because he adds, "You can't make a fellow behave by beating him all the time." He was later transferred to Dannemora, spending about two years in all, in both of these institutions. He did not like it at the hospital, either, because they made him work, and he hated to work; so finally he asked to be transferred back to Elmira, which request was granted him. On returning there he was put to work at bricklaying, but could not get along with the fellow in charge, the latter was too much of a bully and worked him too hard, so finally, they shipped him to the new Reformatory at Napanoch, New York. Here he was given employment by the physician in charge of the hospital, and after ten months of good conduct, was paroled. He says he behaved well these ten months because he was treated well by the doctor. While on parole he went back to Olean and obtained a position in a tannery where he worked for six months, receiving two dollars per night. He was drinking heavily all this time, and one night, failing to return to work, owing to his intoxicated condition, was discharged. He states the above is the longest he ever worked at any occupation since. Shortly after being discharged, he was arrested in company with several others for robbing a post office. He was about twenty-three years of age then. He claims he had nothing to do with this robbery, and it was just an unfortunate incident that he got mixed up in it. He was placed in the jail, and while there the warden tried to poison him. He developed various ideas that poison was placed in his food, that his stomach was all dried up, and because he would not eat, he adds, "They sent him over to this hospital, G. H. I."

He was admitted here the first time on May 29, 1904, on a medical certificate which states: "About April 19, 1904, he refused to take food and claimed to be kidnapped. He had delusions of persecution—said his head was full of nails and requested that his brain be cut up. Said the President was his friend."

On August 1st, he eloped while at work in company with another patient. The record of his mental disturbance at that time is very meagre, and nothing of a definite nature can be obtained therefrom.

From here he beat a part of his way, and walked a part of the way to Cincinnati, where he has a sister living. One night he heard her talking to her husband about sending him back to the hospital, so he robbed them of what money they had in the house, bought a revolver, and returned to Olean. He says he bought the revolver in order to protect himself from a certain police captain at Olean. He frequently refers to this man in a vindictive and abusive manner. States that this police captain was after him all the time; that whenever any crime was committed in the city, he was immediately suspected. He was "tired of this" and bought the gun, intending to kill the police officer if he should bother him any more. Here he adds, "Anyhow, the cur was killed afterwards, I am glad of it." After a series of crimes, tramping and debauchery, during which he suffered from an attack of delirium tremens, and served a sentence of nine months in a Pennsylvania jail, he was again arrested for a post office robbery and sentenced to five years at Leavenworth, whence he was transferred to this institution April 7, 1911.

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As has been stated, he commenced to indulge in alcoholics at a very early age, and has continued this habit during his lifetime. He states that he had an attack of delirium tremens during which he received a severe burn on his left arm by jumping out of a window into a bon fire, while trying to escape imaginary persecutors. During the years 1903-04, he was addicted to the steady use of morphine and cocaine. He has led a very loose sexual life; has been infected with gonorrhoea on numerous occasions, and contracted syphilis several years ago. He has never married. He intended to marry once, but the girl, he found, was not true to him and he gave her up. He is a Catholic, attends church occasionally when at liberty, and was in the habit of going to confession while at the penitentiary.

The medical certificate on his present admission states that on the night of March 20, 1911, the patient was reported for shouting while in his cell, claiming that invisible enemies were shocking him with electricity. There were no symptoms observable before that. Has delusions of persecution in which invisible enemies are continually choking him with electricity and other means and are planning to do him other bodily harm.

He complained of not being able to sleep and of being tortured. Says they wired his cell and gave him an electric shock; that he spoke to the President of the United States and was told that the latter would visit him.

On March 22nd, complained of being choked by supposed workmen. Later he stated that he had been kidnapped at Erie, Pennsylvania, and expected the President of the United States to get him out in a few days. He requested the doctor to send for a priest, complained that they had failed to send for the President as promised. Said that he had received a severe shock the night before from the people upstairs, and stated that they had stored two thousand volts to turn on him. Following this he was restless at night and was apprehensive of being burned to death. Finally he wrote a letter to the President in which he complained that his life and health were in grave danger; that he was the victim of a conspiracy, and was being detained illegally at the penitentiary, stating that while he was walking peaceably along the railroad track, he was kidnapped by enemies who had a design upon his life. He was arrested, and while in jail these same officers robbed the post office and later accused him of this crime. They bribed a witness to testify at the trial against him and because of this he received an unjust sentence for five years. He believed that the friends of the chief of police of his home town, Olean, New York, were paying large sums of money to the warden of the Leavenworth penitentiary in an endeavor to have him electrocuted, and that their efforts had nearly proven successful, as he had been tortured night and day for the past month, in fact, he was unable to stand it any longer, and if the President did not come to his relief at once, he intended to take the matter in his own hands and make short work of the warden. He thought he was accused of the murder of the police officer who was killed in his home town, but he insisted that at the time of the murder he was locked up in jail, hence could not have done this.

The patient continued in this trend of thought and conduct until his transfer to this institution April 7, 1911.

On admission here he talked in a coherent manner, was clear mentally and quite well oriented. He recited the same story as has been given above, namely, that he was kidnapped in Pennsylvania on a trumped-up charge of post office

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robbery, was tried by a phony court and sentenced for five years at Leavenworth. Soon after arriving there the warden had an electrical apparatus rigged up with which he was tortured constantly. He complained to the doctor about this and begged to be put in a cell so he could get some sleep, as he could not sleep in his cell on account of these electric shocks. He heard them saying from above that they were going to torture him. One night they had him paralyzed on one side.

In the endeavor to explain these persecutions he states that probably the railroad police who arrested him were friends of the police captain at Olean with whom he had had trouble for a long time, and who was later killed by someone; that probably they blamed him for this killing, and that was the reason they trumped up the charge of post office robbery against him. He believed that the electrocuting which he was receiving at Leavenworth was a part of this scheme to get rid of him, as he knew that the police captain at Olean was a friend of the warden of the penitentiary. In giving this recital he was somewhat nervous and irritable, constantly rubbing his head and face in a troubled manner. He kept to himself, making no acquaintances with those about him and was apparently somewhat worried and apprehensive. He slept well the first night, stating that nobody bothered him. He stated that he was not insane, that there was nothing wrong with his mind. When asked why he was sent here, said simply because of a trick, that he was told that he was coming to the President to secure pardon, and instead of this, was brought to this institution. He was quite unstable emotionally, very surly and irritable, and soon transferred ~~his~~ his persecutory ideas to the officials of this institution. He complained of having electricity on him; stated that McClaughrey, at Leavenworth, rigged up a wireless apparatus where by he could send wireless messages to him constantly. Stated that he had been chloroformed at night and that his body was lined with electric wires through which electricity was running all the time. He became very abusive to the physician, stating that the latter was in league with the officials at the penitentiary to torture him. This state of affairs continued with the addition of the delusional idea that the physician was endeavoring to hypnotize him, until the early part of September, 1911, since which time he has acquired full insight into his mental disturbance, realizing fully that the various ideas which he expressed were delusional, and that he must have been suffering from a mental disorder at the time.

Mental examination revealed no defect, and his knowledge was quite in accord with his educational advantages. Morally, he was distinctly defective. Physical examination shows various stigmata of degeneration, such as asymmetry of the face; large outstanding and flattened ears; narrow and dome-shaped palate; irregularly placed teeth; prominent parietal bones; two symmetrical depressions on the occiput; congenital flat-footedness, and a sullen facial expression. His arms are covered with tattoo marks. Sense of pain somewhat diminished. Sympathetic reactions could not be elicited. Wassermann reaction with blood serum nearly complete positive.

At present the patient is fully recovered from his recent mental disturbance, and has an adequate amount of insight into it. The general characteristics of his makeup, however, remain unchanged. He is still as surly and irritable as ever, and is ever ready to resent actively anything which he construes as an encroachment upon his rights.

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We have before us an individual, who, to start with, is badly tainted hereditarily. His childhood history is indefinite, aside from his statements of having been usually the lowest in his class. He launched upon an industrial career at a very early age in life and simultaneously with commencing to earn money he began to indulge in alcoholics. His industrial career was cut short soon after. He gets drunk and sets fire to a store, causing the death of a human being. This, at the age of seventeen. His moral status can readily be guessed when we remember his reply to the question as to whether he was sorry for the deed. "Why should I be sorry? I didn't know the man that was burned." The usual course of the law was taken in the case and he was placed in a reformatory. He spent nearly six years between that institution and hospitals for the criminal insane, when he was released on parole. It is of interest to note here how he reacted to the stress of confinement in the reformatory. We find that on two occasions during this period it became necessary to transfer him to an insane asylum. We shall have occasion to refer to this again later.

If there ever existed in him any chance for reform, the reformatory apparently killed it, for his life since then has been an interrupted chain of crime and debauchery. He has been a prey to all the vices of modern civilization; he is a confirmed alcoholic, was addicted to the habitual use of morphine and cocaine; has been infected on numerous occasions with gonorrhoea; has contracted syphilis and received a serious burn during an attack of delirium tremens. In all, he spent eight of the past fourteen years in penitentiaries, jails, and institutions for the criminal insane, and has, now, an indictment for larceny hanging over him. Released from a six year confinement he finds himself thrown upon his own resources and is confronted for the first time with the problem of providing for himself. The poorly begotten organism whose start in life, already deficient in those attributes and forces which are so essential for an effective struggle for existence and which was rendered still more deficient by a six years sojourn among criminals, finds itself unable to cope with conditions as they exist and several months after his release from imprisonment, we again find him arrested for robbery. Being taken hold of by the law does not mend matters in the least. On the contrary, we see the same tendency to break under the stress of imprisonment, with overwhelming burden of an enforced routine existence, reassert itself as on the former occasion, and in reaction to the situation he develops a psychosis which necessitates his transfer to an insane asylum. Placed under

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the less exacting regime of a hospital he soon recovers and avails himself of the first opportunity for an escape which presents itself. Finding himself again at freedom he endeavors to find some explanation for his unfortunate position in life and in the midst of this he discovers that his sister is planning to return him to the hospital. Even his own sister is against him. He begins to assume that paranoid view of life which characterizes his later existence. Now he knows where the trouble lies. The whole world is against him; no wonder he can't get along; his own sister is trying to force him back into the hands of his persecutors. His own deficiencies and incapacities he projects upon the environment. It is the world about him that is at fault; not he. They are after him all the time. He buys a gun with which to protect himself and with renewed antagonism against society in general, he defiantly launches upon a career of crime and vice. Again taken hold of by the law, the old story repeats itself. He lands in an insane asylum.

Upon an analysis of the content of his psychosis we find that he elaborates a story of having been kidnaped in Pennsylvania, upon a trumped-up charge of robbery, taken before a phony judge and given an unjust sentence of five years. The police officers who arrested him were friends of the murdered police captain at Olean and were hired to do this job, because he, (the patient) was suspected of having had something to do with this murder. He dreads being placed in the penitentiary because he knows the warden is likewise a friend of the murdered police captain and might perhaps be in league with his persecutors and take this opportunity of avenging himself upon the suspected murderer, and sure enough, soon after his arrival at the penitentiary, the warden has an electrical apparatus rigged up with which to torture him, etc. His psychosis takes the usual course; he recovers soon after having been removed from the oppressing environment.

The question arises here, "Are we dealing with a psychosis which engrafts itself upon the individual without any apparent cause, a psychosis possessing a course and termination wholly independent of outside influences, a psychosis having no tangible relation to any definite situation; or have we here a psychogenetic disorder, a pathologic reaction of a degenerative constitution to an unfavorable situation, a paranoid picture developing as an outgrowth of the individual in reaction to a definite experience?" In other words, are we dealing here with a case of dementia praecox, as Bleuler would have it, or with one of the degenerative psychoses. If we agree with Stransky that

dementia praecox depends upon an intrapsyche ataxia, that it is the disturbed coordination between the intellectual and affective faculties of the individual which makes the picture of dementia praecox what it is; this is not a case of dementia praecox. The acute emotional reaction to all situations which this patient manifests, the development of the psychosis in consequence of the depth of his feelings concerning the unpleasant experiences and the entire absence of this important incoordination between his feeling and acting, would, in itself, be sufficient to separate his psychosis from dementia praecox. If we agree with Kraepelin and others that dementia praecox has a more or less definite onset, a more or less definite course and termination in a dissolution of the individual's psyche, our case is not one of dementia praecox. Our patient has had the same attributes of character and personality always. There is no indication in his life history of any definite onset of a retrograde process, or of any progression towards dissolution. His psychosis, such as it is, is the outgrowth of his degenerative personality, and if we assume this to be true, if we consider the psychotic manifestations of this individual as pathologic expression of his anomalous personality, the question arises—to what extent have his criminal acts likewise been pathologic expressions of the same underlying degenerative basis? I believe that the relation between the criminality and mental alienation of this man is analogous to that existing between two branches of the same tree. The same degenerative soil which makes the development of the psychosis possible in one case, expresses itself in crime in another instance. The factors which determine whether the one or the other phase will manifest itself, depend entirely upon environmental conditions, and are accidental in nature. The stresses which these defective individuals meet with in freedom need not have such a strong influence upon them as to produce a psychosis. The want of moral attributes makes it possible for them readily to surmount many difficulties by means of some criminal act, difficulties, which in a normal person, would require extraordinary effort to remove. When placed, however, under the stress of imprisonment where they can neither slip away from under the oppressive situation, nor square themselves with it by some criminal act, the organism becomes affected to such a degree that the development of a psychosis is greatly facilitated. The character of the delusional fabric of these individuals is such that one can easily find a ready and more or less correct explanation for it. It is chiefly a compensatory reaction in an endeavor to make a certain unpleasant situation acceptable.

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J. H., aet. 37. Admitted to the Government Hospital for the Insane, March 8, 1909. Maternal grandfather died suddenly from unknown cause. Was a race-track operator. Father alcoholic. Mother suffered from vertiginous attacks. There were twenty-one children in the family, fifteen of whom died in infancy. One brother died of brain tumor. One sister is neurotic; her eight-year-old son suffers from congenital heart disease. Patient was born in Manchester, England. He was the twentieth child; mother was over forty years old at the time of his birth. He was an unusually small and puny infant and remembers using crutches when a child. At seven he was bitten by a dog and dragged about on the ground for a long distance; when finally rescued was unconscious for a long time. No further ill after-effects. School life was characterized throughout by truancy and disobedience and finally terminated in expulsion. At that early period of life he already showed marked egotism, extreme vindictiveness and an utter disregard for consequences. The immediate cause of his expulsion from school was a fistic encounter with a teacher. At the age of eleven his family migrated to this country. He states that he was different from other boys of his age, did not care for the ordinary childhood sports, and the only friends he had were a younger sister and a dog. He states that he couldn't get along somehow with the other boys, that he often thought the whole world was trying to down him and persecute him. About that time somebody stole his dog. He brooded over this so much that he finally jumped into a creek, intending to commit suicide, but was rescued by bystanders. He has made several other attempts at suicide in later life. In describing these he elaborates them with a lot of fanciful trimming, dilates on the importance of the various situations attending them, and how much uproar they caused among those who knew of them. At the age of fourteen he had a quarrel with another boy. Upon being reprimanded by the latter's father, he could not rest until he had obtained a gun and fired at the boy's father while the latter was sitting at the supper table with his family. In relating this incident he states with great vanity that he fully intended to kill the boy's father; he wasn't going to be insulted by anyone and let it go at that. Here was probably the first well-illustrated instance of his pathologic emotionalism, the tendency to a complete dominance of a certain affection. He was committed to some sort of an industrial school for a year. Upon his release from there he went to work in a machine shop in his native town. One day a couple of gentlemen and a lady walked through the shop and stopped in front of the machine on which he was working. He did not like this, became angered, picked up the dog which followed them and threw it into the oil tank which fed his machine. At sixteen he ran away from home. He gives a history of an industrial career and apparently he had no difficulty in learning a trade, while it is quite likely that he was a skilled workman. His entire industrial career, however, is characterized by an inability to fit harmoniously into the situation at hand, not because of an intellectual deficiency but because of the disharmony between his various mental faculties. His extreme sensitiveness and emotionalism, his vindictiveness, the total lack of a sense of responsibility, his impulsive existence, all these, were always at play in his relations with men. If to these he added his extreme egotism and vanity, the reasons for his conflicts become clear. "Here, the foreman thought he knew more than I did." "There, I did not like the way they were running the business," etc. Among his occupations, saloon-keeping and professional gambling played an important role. He

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finally gave up all attempts at leading an honest existence and turned to crime. Our record of the man in this regard is rather incomplete, but according to his record at the Secret Service Bureau, he was sentenced in 1890, to a two years' term for highway robbery. In 1902, to three years for counterfeiting; in 1904, to three and a half, and in 1908, to six years for the same offence. These sentences were incurred under various aliases. He married at a very early age. He says he made up his mind one night to get married and two days later was married. His conjugal life, like everything else he engaged in, proved a failure and was characterized by repeated desertions. He commenced using alcoholics at an early age and has indulged excessively all his life time. He has had several gonorrhoeal infections, and has an active luetic infection at the present time. On May 5, 1908, he was sentenced to a six years' term of imprisonment. Soon after, it became necessary to perform an operation for appendicitis, and upon recovering he began to complain of having been cut open and having poison put inside of him. The U. S. Government sent men down to the prison who were threatening to kill him. He saw detectives from Washington, whom he recognized. He was very apprehensive and refused to submit himself to an examination, and made homicidal attacks on the officers. On March 8, 1909, he was admitted to this institution. His conduct here was characterized throughout by the same attributes of character which were at play throughout his entire anti-social existence. He was at all times very emotional, flying into a rage on the least provocation. He was very sensitive, becoming offended on the least provocation and when laboring under some imaginary grievance his antagonism and vindictiveness knew no bounds. He was constantly plotting and scheming some means of inciting a revolt among the other inmates and took every opportunity to put himself forth as the champion of the other patients. He was very egotistical and vain and showed a marked tendency to interpret most trivial occurrences in his environment as having some reference to him. He was always ready to endow every incident with a personal note of prejudice. He showed throughout marked fluctuations of mood. One never knew what sort of a reception one would meet. He was a pathological liar, was keenly alert to everything that transpired about him and was always ready to utilize every incident to his own advantage. He was depraved to a very marked degree morally. He gave his past history with the least sign of regret and when questioned concerning the reason of his criminal life, he objected strenuously to being called a criminal, insisting that what he did was right. At times he impressed one by his mode of reaction to various daily occurrences as being as naive as a child and suggestible to a very marked degree. He frequently threatened to commit suicide if refused some of his impossible requests and showed a marked tendency to hypochondriasis and exaggeration of actual ills. On this basis he developed various persecutory ideas, exclusively directed against those who had anything to do with his care and safekeeping. The warden at the jail before he came here tried to poison him and took the opportunity of accomplishing this while he (the patient) was undergoing an operation. The Government sent Secret Service men down to watch him and persecute him. Here the physicians are doing the same thing. They are trying to down him, to make his life miserable for him, etc. Throughout his sojourn here he was clearly oriented, knew everything that was going on and failed to show the least indication of the existence of a deteriorating process. He showed also a marked tendency to write a good deal

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of poetry and fiction in which he spoke of himself as a martyr who has been persecuted and downed all his life time. His stories were of a fantastic, adventurous kind, in which gambling, shooting, and similar highly melodramatic situations were enacted. On July 17, 1911, he was returned to prison as recovered. Another point of interest in this case and one to which I have briefly alluded before, was his tendency to the exaggeration of symptoms and to malingering, but the malingering which he manifested was of the kind that the child manifests in an endeavor to attract attention to itself and to arouse the sympathy of those about him.

Here again we have before us a kaleidoscopic picture of the life of a human being who from childhood showed tendencies so anti-social, so criminalistic, that it is hard to get away from the belief that all the attributes which went to make him just what he is, must have been inherited. Let us take this poorly-begotten organism and follow it through life. We shall see how its existence has been a continuous round of conflicts with everything with which it came in contact. He entered school and meets with the first obligation, with the first necessity for a well-regulated, purposive existence. What is the result? Truancy, disobedience, and finally, expulsion—not because of intellectual deficiency, but because of those same attributes which later served to put him in the penitentiary. It was the first evidence of his pathologic emotionalism and vindictiveness. We next see him in an effort to lead an industrial life, but here, too, everything he does proves a failure and likewise, not because of intellectual deficiency, but because of a disharmony, a disproportion, between his various mental faculties. He could not, somehow, submit himself to any well-regulated existence. His egotism and absolute lack of the sense of responsibility make it impossible for him to adjust himself effectively to the world about him. He next tries matrimony, and the same story reasserts itself. His conjugal life is characterized by repeated desertions; and thus he becomes steadily more debased, more depraved, sinks to the level of the professional gambler and finally even this becomes too strenuous for him, and he turns to a life of crime. At the age of forty we find him with a record of numerous arrests, and as far as is known, one-fourth of his life time has thus far been spent in jails and penitentiaries. The characterological anomalies at the bottom of his career came to the front already in his childhood days. Before completing his fourteenth year we find him deliberately planning the murder of a human being because of an insult. His idea concerning that situation has not changed in the least since then. He now speaks of it without the least sign of remorse or regret. As a matter of fact, he is inclined to impress one as being rather proud of that deed, and he cannot see the

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criminality of it. The atavistic nature of his act in throwing the dog into the oil tank is quite evident. Then his attempts at suicide throughout his lifetime, evidences of a pathologic emotionalism, must also be remembered. These are a few examples of his mode of reaction to everyday occurrences in life. Is it at all strange that he has developed finally into the habitual criminal? On the contrary, it would be rather strange that an individual of such attributes should turn out to be an honest, peaceful citizen. He likewise, was a prey to all the vices of modern civilization, and these, as in the preceding case, unquestionably added to the dissolution of the original defective organism. We finally meet with an illustration of the other phase of his mode of reactions. Following imprisonment on a charge of robbery, he develops a psychosis which necessitates his transfer to an insane asylum. Brief as the description of his psychosis has been, it is sufficient to illustrate that here we are likewise dealing with a psychogenetic disorder manifesting itself as a reactive expression of a degenerative constitution to an unpleasant situation. Shortly after his arrest he is being operated on for appendicitis and upon recovery elaborates the idea that the warden of the jail, one of the members of that large class against whom he has been warring all his lifetime, takes this opportunity of placing poison in his body. He sees and hears people around his cell whom he recognizes as Secret Service men sent down from Washington to torture him. On his transfer to our hospital he readily carries over his delusional ideas to the officials here. He is simply being persecuted by a bunch of anarchists, who are trying to down him and make life miserable for him.

It has long ago been questioned by psychiatrists whether these so-called delusional ideas of this class of patients deserve to be endowed with the value of delusions. Let us not forget that a similar attitude toward officialdom exists in the minds of criminals enjoying a respite from the law. It is the officers of the law, society's institution for the prevention and punishment of crime, that these people have to fear, and when they speak of being persecuted by those who have their care and safe-keeping in hand, it is not, necessarily, a pathological manifestation. The only difference between such paranoid ideas in the criminal at freedom and the one in confinement is that in the latter case, coupled with the stress of confinement, the stress of an enforced routine existence, these ideas assume enormous proportions and in some instances become supported by fallacious sense perceptions. Their exaggerated self-consciousness, their great tendency to introspection, a tendency which is very much enhanced by

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confinement and plenty of leisure time for such indulgence, and their paranoid attitude towards law and its officers, makes it possible for them to endow the least occurrence in their environment with a personal note of prejudice. The least deviation from the normal routine has a meaning to them, a meaning which is readily interpreted as some evidence of persecution, of prejudice, etc. The course of their disorder shows so much evidence of this psychogenetic character that it is impossible to think that we are dealing with a psychosis which apparently has no relation to the situation at hand. Every symptom which they manifest can be traced to some definite cause and can be clearly explained as being of the nature of a reaction, of a motivated expression to a definite experience. It is, I believe, unnecessary to enter here into a lengthy discussion to show that we are not dealing here with a case of dementia praecox. These psychoses are too psychological in their origin, course, and termination, to give one the least basis for the assumption of a dementia praecox process. Of course, I am fully aware of the claims of the Zurich school headed by Jung, that dementia praecox is just as much of a psychological disorder as any that we know of, but I must agree with the opposite school, championed by men like Kraepelin, Bonhoeffer, Birnbaum and others. Jung has not proven this point by his otherwise excellent and very thorough analyses of cases of dementia praecox. All that he can claim to have established by his work is that here and there we can find certain plausible explanations for some symptoms which the dementia praecox case manifests. We will, therefore, conclude that we are here likewise dealing with one of the degenerative psychoses and we will consider the criminal tendencies of this individual likewise as expressions of that same degenerative soil which permitted of the development of the psychosis.

P. F. alias H. White, male, aet. 42. Admitted to the Government Hospital for the Insane, March 11, 1910.

Father is a chronic alcoholic; one brother a wanderer, has not been heard from for twenty years; one sister suicide; one sister left home at the age of eighteen and has not been heard from since.

Patient was born in England in 1868. Was a healthy child as far as he knows; no history of spasms or convulsions. Talked and walked at the usual age. Of the diseases of childhood he had whooping cough, measles and scarlet fever, from which he apparently made good recoveries. Entered school at the age of seven; attended irregularly until he was twelve years old. After leaving school he made an attempt at learning a trade and worked as apprentice for some time. At fifteen he endeavored to enlist in the British Navy, but was rejected on account of palpitation of the heart. In 1884, at the age of sixteen, he joined the Royal Marines; soon found this to be disagreeable to his tastes, and

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wanting to procure his discharge, he stole a suit of clothes off a dummy with the avowed purpose of being discharged for the offence. Was arrested, pleaded guilty, and served a sentence of one month. In 1886, at the age of eighteen, he enlisted in the Royal Fusileers and deserted therefrom about a month later. He then re-enlisted in the eighteenth Royal Irish Fusileers, shortly afterwards deserted, and then gave himself up; was court martialed, dishonorably discharged and given a sentence of six months, which he served in Brixton's Military Prison, London. In 1887, at the age of nineteen, under the name of Henry Sayers, he joined the Welsh Division of the Royal Artillery, whence he deserted two months later and sold a kit and coat belonging to another recruit; was apprehended, tried and given a sentence of six months. In all, he was dishonorably discharged from the service seven times. In 1892, at the age of 24, he immigrated to this country. On arriving here he worked about a month at railroading and then enlisted in the army, deserted after serving three months, and crossed the Canadian border. He subsequently returned and gave himself up to a sheriff, was court martialed, dishonorably discharged, and given a sentence of one year and a half. After being released he resumed his nomadic existence but in a more pronounced manner. Since 1895, he has had no definite occupation, subsisting on begging, stealing, and peddling minor articles, chiefly on the two former. He has spent most of his life since then in penitentiaries and workhouses, and when at liberty, in cheap boarding houses and missions. Since 1895 he has been arrested twenty-two times for vagrancy to his own knowledge, served four years at Moundville and Atlanta for robbery, and six months for theft. He commenced to indulge in alcoholics at a very early age and has been an excessive drinker all his life. Has been intoxicated on numerous occasions and has had delirium tremens twice. In 1897 he indulged in opium smoking for thirteen days and in 1904 sniffed cocaine for the same period. On three or four occasions in his life he has had sexual experiences with men and there is a definite history of inversion. He was married twice. His conjugal life with his first wife was a very unhappy one. He attributes this entirely to his own fault. There were three children from this union, all of whom died in infancy. He left his first wife without obtaining a divorce from her and subsequently, in 1898, married again. This union was happier than the former one. His second wife, however, died in 1905. There were no children from this union. He acquired gonorrhoea and syphilis in 1899. In 1907 he prepared an elaborate attempt at suicide, purchased a dagger for this purpose, and set June 13th as the date. He was, however, arrested shortly before this, and thus his plan was frustrated. He states that it was not disgust of life that drove him to do this. He simply had a desire to see whether he had the nerve to execute such an act. On February 2, 1910, was arrested for vagrancy and begging, and given a sentence of 180 days in the work-house. While in his cell he attempted suicide by inflicting superficial cuts over the praecordium, wrists and calves of the legs with a piece of broken table knife. These were very insignificant in nature. While confined in the work-house he developed various fallacious sense perceptions, saw visions of weird and fantastic nature, and frequently these would take on a religious and sexual coloring—he would see nuns' heads. He also developed auditory hallucinations, and would hear voices of a disagreeable nature. He was subject to peculiar sensations as though there was a wire frame-work inside him which made him squirm. This necessitated his transfer to this institution.

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On admission he was well-nourished, but prematurely gray. He had numerous tattoo marks on his body: on the right forearm a woman in tights and the head of another; on the left forearm initials U. S., flag, ship and cross; over dorsum of left hand a star, and a band across the wrist. His vision was impaired to some extent; otherwise negative. Aside from a futile attempt at suicide, which he made shortly after admission, his conduct has been excellent. He has never been known to become involved in altercations or quarrels with his fellow patients, and has obeyed fully the rules and regulations of the hospital. He was somewhat circumstantial during a lengthy conversation, but in a superficial interview he made quite a natural impression. He was clearly oriented and showed no memory defect. His answers to the intellectual tests failed to show any intellectual impairment. His emotional tone was unvaried. He was always very polite, courteous and optimistic, and very popular with the attendants. He willingly assisted with the ward work at all times. He was keen and alert, fully cognizant of everything that transpired about him. He spent his time reading and rarely associated with his fellow patients, whom he considered below him intellectually. He believed in reincarnation, and thought himself to be in a former being the Pharaoh of Egypt and the Earl of Warwick. (There were present fallacious sense perceptions.) He had tactile, auditory and visual hallucinations of a religious and sexual coloring. These were, however, transitory in type, and perhaps better called pseudo hallucinations, as he was able to bring them on and cause their disappearance at will. He was frank in his statements and discussed the various ideas without hesitation. He was inclined to write a great deal, especially poetry of the waste basket variety, and considered himself quite proficient in this respect. On February 2, 1911, he appeared before the Staff Conference where the advisability of granting him parole of the grounds was considered. Upon being refused this privilege he again attempted suicide by making several superficial cuts across the wrists. These were quite insignificant in nature. At the present writing the patient, I am told, if anything, has improved somewhat. At any rate he shows no intellectual impairment nor evidence of any progressive mental disorder.

Here is another individual who started out in life with a heavy hereditary burden. His early childhood, so far as can be determined, was normal. He entered school and here met the first obligation. He wavered, showed a tendency that early, to be unable to lead a well-regulated life and in consequence his school attendance was irregular. The next difficulty he met was in attempting to learn a trade. He soon found this too strenuous and sought an environment less exacting in nature, and at fifteen we see him endeavoring to enlist in the navy. This is probably the first indication of his "wanderlust." He was rejected, and after another year's effort to get along in his immediate environment, finally succeeded in entering the navy. Soon, however, he found out that navy life was not what he had pictured it to be. It, likewise, was too exacting. He had to live up to prescribed rules, obey orders—things to which he could not reconcile himself, and in consequence failed of a proper adjustment. He knew he could not

stand it, he must get out. He must seek something more suitable, something less exacting. In looking for a way out of the situation, he availed himself of the first opportunity, stole a suit of clothes with the avowed purpose of being discharged for this offence. Here is the starting point of his criminal career. He did not reflect upon the consequences. He knew he must gratify his desire to get out of the navy, must do it at any cost, and yielded to the temptation. This yielding to temptation, this lack of power of resistance, characterized his entire life. He yielded to every vice that crossed his path; he stole, he drank, he became a morphine habitue, he sniffed cocaine, acquired gonorrhoea and syphilis in his promiscuous sexual trends, and lastly, yielded to sexual perversion. After having served his first sentence he was released and again found himself thrown upon his own resources. He had not, as yet, reached the stage of the habitual criminal with the utter disregard for property rights, nor had he reached that nonchalance of the hobo, whose philosophy rests upon the dogma that the world owes him a living, that tomorrow will provide for itself somehow. He began to yearn for the service again. There, at least, he was provided with shelter and food. There, at least, he did not have to worry for the tomorrow. He entered the army, deserted, re-entered, deserted again, and kept this up until he was dishonorably discharged seven times. He could stand it just so long. His lack of stability, his inability for any continuous, purposive effort, made him slip from under the stress. He has less dread for the future now. He was beginning to acquire that naive philosophy that somehow the world would provide for him. We next hear of him across the ocean. Here his "wanderlust," his love of adventure, reasserted itself, but somehow he did not fit into existing conditions, and unable, because of his particular organization, because of his disequibrated mentality, to create for himself a suitable environment, his existence continued to be an unbroken chain of conflicts, of contradictions, and of failures. He finally tried matrimony, but here, too, he soon felt the overwhelming burden of duties and obligations. He was not assisted in sustaining these by any moral sense, by any paternal feelings—in these he is absolutely lacking—and after a more or less continuous struggle to cope with the situation, left wife, situation and all. He realized subjectively that he and his wife were not congenial. As a matter of fact, his entire life has been a continual round of uncongenialities, of inability for a proper concourse with men and things in the world. Throughout his life his ego occupied the centre of the stage. It is he that has to be satisfied first. After leaving his wife he resumed his

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nomadic existence and some time later married again. But by this time he was a full recidivist, as well as an accomplished hobo. The nomad was no longer able to adjust himself to a communal existence. Besides, it required effort. He was expected to provide and he could not be expected to do anything. Fate was in his favor—his wife died. It must not be forgotten that by this time he had made full use of the kind oversight of the law. He had been arrested innumerable times, he had breathed the atmosphere of the work-house and partaken of the penitentiary menu. The once unfinished product had been shaped and polished by the machinery of law and order of our modern civilization so that all dread and fear of punishment had lost its value with him. At last the organism which was originally begotten from decayed stock, which had been tossed and knocked about through its entire existence and preyed upon by all the vices that modern civilization affords, began to falter and shake. He developed a psychosis. I shall not enter here into an extensive discussion as to the diagnosis of the disorder. The total absence of any indication of progression in this man's mental disorder, the pliability of the various delusional ideas and hallucinatory disturbances, his perfect control over them in the matter of bringing them on and causing their disappearance at will, speaks sufficiently against *dementia praecox*.

A. W., (col.) age 28. Mother suffers from neuralgia and headaches; one sister died of pulmonary tuberculosis. One brother is now serving a sentence at Moundsville Penitentiary for assault and battery. Another brother has been frequently arrested for various offences.

Birth and childhood of patient apparently uneventful. During childhood fell from a fence following which he was unconscious for some time. Entered school between ages of 7 and 8, and attended regularly for about two years, when he became unruly and ungovernable—would play truant on frequent occasions, and finally left school before finishing the fourth grade. He worked around home a little while, and was arrested the first time when 11 or 12 years of age, for assault. At 14 he was again arrested for some minor offence, and shortly afterwards was sentenced to one year in jail. On August 20, 1902, at the age of eighteen was arrested for carrying concealed weapons and discharging them in the street, for which offence he served five months in jail. March 3, 1903, sentenced to serve 30 days for larceny, and on the same date was further charged with disorderly conduct, for which he was given 15 days in the work-house. May 1, 1903, he was sentenced to 60 days in jail for petty larceny; July 18, 1903, charged with fornication, but charge was withdrawn. August 31, 1903, sentenced to 30 days in jail for being drunk and disorderly, and committing assault. November 1, 1903, sentenced to 15 days in the work-house on a charge of disorderly conduct. November 17, 1903, sentenced to twelve years for assault and highway robbery. He commenced using alcoholics at a very early age, and has indulged heavily since then. He was admitted to the Moundsville Penitentiary December 13, 1903, where he remained until July 4, 1908, when he was

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transferred to Leavenworth. His record at the penitentiary is a very bad one. He was frequently punished for various offences and showed a constant tendency to disobey rules and get into altercations with fellow prisoners. He was in solitary confinement several times, and forfeited almost all his good time. Frequently became mildly excited and had to be secluded. On December 12, 1909, he became violently excited, singing, shouting, praying, and cursing in the most irrational manner. This state of excitement persisted unremittingly for 72 hours. He declared that his lungs were rotting with tuberculosis or some other foul disease, and that he was suffocating. He persisted in exposing himself in a nude condition and refused nourishment.

He was admitted to the Government Hospital for the Insane, December 24, 1909. Physical examination showed him to be a well-developed, healthy negro. Both deep and superficial reflexes exaggerated; ankle clonus both sides; hyperaesthesia of abdomen and face. He stated that two or three months prior to his admission to this hospital he became suspicious of his food; had a burning in his stomach after eating; believed that his health was failing him; his breath became short, voice weak and lungs rotting. Early in December, 1909, he believed he had been chloroformed by the prison officials for five days; he is not certain how this was done, but thinks that it might have been poured through the keyhole. During this period he sang like a graphophone; voices said "move his head," and his head would move of itself. When his eyes were open he saw nothing unusual but when they were shut he could hear them operating a machine on his body; they were pumping his stomach, and he became a skeleton. This was done to him through prejudice; does not know who was prejudiced against him, but at the prison they know all about it. Said he had not slept a wink since his admission to this hospital; his breath is short; he has pains around his heart, but thinks he is getting better now.

He was a negro of limited mental capacity, and possessed very little acquired knowledge. He was clean and tidy in his habits, keenly interested in his environment, and well oriented in all spheres. He lacked insight into the nature of his trouble. Attention could be easily gained and held; he comprehended well and readily, and showed no memory defect. There was a very marked tendency to hypochondriasis, and exaggeration of actual ills. Soon after admission the active symptoms of his disorder disappeared, and he gradually acquired an adequate amount of insight, realizing that he had been insane. His conduct, at first orderly, now assumed the same character as that at prison. He frequently became involved in altercations with other patients, and on several occasions manifested decidedly vicious tendencies. He was almost absolutely unamenable to the hospital regulations and on that account had to be frequently reprimanded. He incited the other patients in his ward to all sorts of misdemeanors, and when not having any complaints himself, would fight the other patients' battles. He remained clearly oriented throughout. He was decidedly deficient morally—could not see where his life had been an unsocial one, and does not even promise to lead a better one in the future.

Here, again, we see disease and crime rampant in the family history of a man who himself began to manifest criminal tendencies at a very early stage in life. His school career is characterized by truancy, and he never made an effort at an industrial career. At the age of 11

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or 12 we already find him arrested for an offence against the person, and before having reached his twentieth year, he had received a penitentiary sentence of 12 years. His psychosis is unquestionably one belonging to that large group developing on a degenerative basis, the same soil which is at the bottom of his criminal career. What his future life is going to be may readily be surmised; he has not yet reached his thirtieth year—and by turning him loose at the expiration of his present sentence, society adds only another parasitic and infective organism to gnaw at its roots. It would be, indeed, ridiculous to expect the boy who at the age of 19 was placed in the environment of a penitentiary—the hot bed of crime—to be turned out a better man after having spent twelve years there.

W. A., white, male, age 36 years on admission to the Government Hospital for the Insane, January 18, 1911. Father a chronic alcoholic; mother neurotic; one sister insane; one uncle suicide. Mother enjoyed good health during her pregnancy with the patient, but birth was an extremely difficult one.

Patient learned to talk and walk at the age of 5, when he was severely scalded which necessitated his confinement to bed for a long time. Entered school at the age of 7 and attended for about 8 years, reaching the 6th grade. He experienced no difficulty in learning but played truant on frequent occasions. His industrial career constitutes an uninterrupted chain of failures. He was frequently discharged for various offenses and quarrels with his associates. He commenced to indulge in alcoholics at a very early age, and has been an excessive drinker all his life. Married in his twentieth year and managed to live with his wife for six years, when she left him on account of infidelity, non-support, and drunkenness. One miscarriage and one apparently healthy child were the results of this union.

He came in conflict with the law for the first time at the age of 12 or 13, for some offense against the person. We have an incomplete record of his criminal career, but this can easily be surmised when we take into consideration that part of it which we do possess. Between March, 1903, and December, 1910, he was arrested 13 times for assault, 28 times for disorderly, and drunk and disorderly, twice for house-breaking once for petty larceny and twice for vagrancy. Habitual drunkenness, destruction of private property, and depredation on house furniture, add to the list of charges against him. During this period he served a penitentiary sentence, was tried for murder, and acquitted on a second trial on a plea of self-defense, and on four different occasions, was ordered to be examined mentally. Following a debauch, during which he was arrested three times for assault, he developed a mental disorder in jail while awaiting trial, which necessitated his transfer to the Government Hospital for the Insane.

He developed the idea that someone was always around him looking for a chance to kill him. Continually heard strange voices and noises. Was very nervous and irritable.

The records accompanying him stated that for years he had had a particularly bad and dangerous temper. That he had several previous attacks of mental disorder; had repeatedly committed assaults, and was found not guilty of a murder

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committed 7 years ago—an act of insanity. Had been arrested by the Washington police about 75 times.

His mental disturbance soon cleared up, and on admission to the hospital he was absolutely free from any psychotic manifestations.

He was a well-developed man of average intellectual attainments. He was somewhat unstable emotionally, and his promises to lead a better life in the future were usually accompanied by a good deal of crying. He was a monumental liar, and although endeavoring to impress the examiner with the idea of being quite remorseful about his past life, it was clearly evident that his moral status was a very low one and that his promises and resolutions were merely brought forth to aid him in securing his freedom. He was extensively tattooed and showed remains of old syphilitic lesions.

Upon his release from the Government Hospital for the Insane, he was given a one year's sentence to the work-house, and the Press has been reporting frequent misdemeanors performed by him in the work-house.

This case is interesting only in as far as it illustrates exceptionally well the role of alcoholism in the habitual criminal. It is, however, very difficult to decide whether the alcohol should be considered here the cause of the man's degeneracy, or its result. It would appear that whatever injurious effect inebriety had upon this man, and unquestionably it had, he owes his anomalies of character to causes over which he had no control. We find that his father was a chronic alcoholic, his mother a neurotic, a maternal aunt insane, and an uncle a suicide. That these pathological traits in the antecedents left their impressions on him cannot be doubted for one minute. He was abnormal before environment and personal habits had had time to make themselves felt. He, too, oscillated between the penal institutions and the Hospital for the Insane all his lifetime. That the same degenerative basis lies at the bottom of both his moral and mental alienation, cannot be doubted.

Let us endeavor to see now in what respects the above individuals simulate one another, and whether this similarity is of sufficient import to warrant the grouping of them into one category. Commencing with the family history, we find that disease and crime were manifested in the antecedents, either direct or indirect, of all of them, that unquestionably because of this, not one of these unfortunates was brought into the world with a sufficient impetus to carry him successfully to his goal. In every instance we find that the characterological anomaly became manifest already during their school career. It was the persistent truancy, disobedience and antagonism to submission to a well regulated existence and not so much the incapacity to learn, which distinguished them from the other children in school. The same attributes of character which were at the bottom of their con-

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frictions with the school authorities brought them into the hands of the police authorities soon afterwards. The contact with the outside world soon served to bring out other pathological traits of character. We now see them manifest a pathologic emotionalism, an unbounded egotism, a relentless vindictiveness and an apparently total disregard of consequences. Frictions with the surrounding world, which a normal individual meets in an ordinary manner with a view towards an efficient adaptation to existing conditions, were reacted to by them in a distinctly anti-social manner, with methods entirely devoid of consideration of the rights of others, an attribute so essential for a proper concourse with man. Thrown finally upon their own resources, when they had to rely for their existence upon some industrial pursuit, we find them lacking that most essential prerequisite for the efficient struggle for existence—definiteness of purpose and continuity and persistence of effort. We find them leading a harum-scarum existence, drifting from place to place, and from occupation to occupation, never able to remain at any one undertaking for any length of time.

The next features which stand out prominently in the lives of these individuals are their recidivism and the fact that every one of them came under the observation of an alienist on one or more occasions in his life. What is at the bottom of all this? We cannot, of course, deny the very evident fact that these individuals differ from normal man and that this difference is due to their inferiority. But what characterizes this inferiority? Is it the lack of something which normal man possesses, or is it rather a disproportion, a disharmony between the various individual mental faculties of these individuals? In other words, is their inferiority a quantitative or a qualitative one? Taking the pure intelligence into consideration we find that they show no deficiency in this particular sphere. On the contrary, most or all of them show a degree of shrewdness and keenness which absolutely precludes the existence of an intelligence defect per se. Their recidivism is not due to an inability to distinguish between right and wrong. They know very well what is and what is not right, at any rate, as well as the average person, but they feel decidedly different from the average person about this distinction. They are what they are because of a discord, a disproportion between their various psychic attributes. The exaggerated egotism, which is so common to these individuals, serves to establish a pathologic degree of self consciousness. This in turn makes them feel with an extraordinary keenness the everyday frictions in life, and now the pathologic emotionalism comes into

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play and being unsupported by any sense of altruism and morality they give way to their feelings in some criminal act. Their pathologic vindictiveness should also be mentioned. A sustained real or imagined injury can never be forgotten by them.

These, in brief, I believe to be the characterological anomalies which distinguish the individuals herein reported from normal man and which at the same time are sufficiently common to all of them to justify their segregation into one distinct group of criminals.

I shall not enter here into a discussion of what part, if any, environment played in the shaping of the lives of these individuals, for several reasons, chief among which, however, is the fact that I have not had the opportunity of investigating thoroughly the environmental conditions in which they grew up and am, therefore, unable to evaluate properly this phase of the question. The fact, however, that my cases were culled from various sources and that the anomalous traits manifested by them were already present at an age when environment could hardly have had any lasting influence upon them, leads me to believe that it is heredity which is responsible for the major portion of this anomalous product. However, we shall leave this question to the decision of the practical eugenists. Personally, I fully believe that we are dealing here with a type which may well be designated as "the born criminal." I fully believe that these individuals were always the same as they are now and the probabilities are that they will always remain so. Assuming then, for the moment, that we are correct, the question arises: "Has society dealt with these individuals in a proper manner?"

This question must be answered decidedly in the negative. I will not enter here into an extensive discussion of a system of penology which might be specifically applicable to this class of individuals. I can only fully agree with the current opinions of eminent criminologists on this subject.

At last year's Congress of Criminology and Anthropology at Cologne the following resolution, among others, was adopted: "Hardened and professional criminals, recidivists, who present a great danger to society must be deprived of their liberty for as long a time as they are dangerous to the mass. Their liberty should be as a general rule conditional."

Archibald Hopkins, Esq., has been recently quoted by Gault, as follows: "The Head of Scotland Yard, in London, said not long ago that nine-tenths of the serious crimes there were committed by men who had served one or more terms of imprisonment and who

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might be regarded as belonging permanently to the criminal class. His judgment was that if they could be eliminated from such a situation violation of the law would be diminished to less than a third of what it has been. Why cannot this be done? Let the courts be clothed with the power, after two or more offences, in its discretion, to pronounce a man incorrigible, who shall be sentenced for life to whom no pardon shall issue. By an arrangement between the general government and the states a colony could be established, say in the Island of Guam, where escape would be impossible, and where, under military guard, convicts could be made to earn their own living. Surely society has the right to protect itself from these incorrigibles, who are released only to prey on it again. They also are the class who rapidly reproduce their kind, and at present society puts no obstacle in the way.

"It is exactly as if instead of forming colonies to which all lepers are compelled to go and remain we permitted them, after a brief term in the hospital, to go where they please and to marry and produce more lepers. The incorrigible criminal is worse than the leper because he deliberately and purposely defies society and spreads his contagion. It can hardly be questioned that the permanent segregation of the professional criminal class would very greatly diminish crime, nor can it be questioned that society has the right to adopt such a measure of protection, nor that it would be entirely practicable."

(See this Journal, March, 1912, pp. 821 f.)

The only argument, and a very weighty one it is, which can be raised against the foregoing proposition is whether the incorrigible criminal is sufficiently characterized by such unmistakable features which would enable us to recognize him when we see him, and thus justify his permanent isolation from the community. I believe he is, and the cases here reported are fair representatives of that class. Another problem which presents itself is, Where shall we put the incorrigible criminal? If we agree that he owes his criminality to causes over which he has no control and that the crime here is the outgrowth of a degenerative personality, a personality which is distinctly abnormal, it would seem that he belongs in a hospital rather than a penal institution, but is this unequivocally so? It is unquestionably true that these individuals are abnormal, that without actually being insane they evidence from their earliest childhood a more or less distinct deviation from the normal, they may therefore be considered as "border-line cases," i. e., cases which deviate from normal man and incline toward the insane through numerous gradations. As

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soon, however, as their abnormality manifests itself in distinct incorrigible anti-social tendencies, the right of society to protect itself from such an element must be considered. When free from actual psychotic manifestations (which very easily engraft themselves upon this degenerative soil) these individuals do not belong in a hospital for the insane. Here they serve only as a very troublesome and disturbing element, and wield an undesirable influence over many easily impressionable insane patients. They do not belong in a general penal institution because of the very deleterious influence they exert on the accidental but uncorrupted convict with whom they come in close contact in these institutions.

It is my opinion that these individuals forming as they do a distinct species of humanity, shall be segregated into colonies especially designed for them, where under proper *medical* supervision they should be made to earn their existence by means of some useful occupation. It is very obvious that an indeterminate sentence is the only rational way of approach to this problem and this should be supplemented by the vesting of the parole power in the hands of a board composed not exclusively of members of the legal profession, but largely of physicians and particularly those trained in psychopathology.

THE UNIT IN CRIMINAL STATISTICS.

LOUIS N. ROBINSON, SWARTHMORE COLLEGE.

In the collection and analysis of statistics, the importance of having a unit which is well defined and easily recognizable is commonly conceded to be great. The collection of statistics is primarily a process of counting, and it is absolutely essential that all those things which belong to the category in question, and only those (one may add) should be counted. To bring about this desired result, those who organize the work of collection state as accurately as possible, for the benefit of those who must do the work, the features which any particular thing must have in order to belong to that category. The concept to which a definite content is thus given beforehand is the unit. Very often the selection of a proper unit is a task of little difficulty, but sometimes almost insurmountable difficulties stand in the way. It must, however, be borne in mind that a vaguely defined unit not only will imperil the collection of the statistics, but will also jeopardize all conclusions based upon them. It constitutes a veritable Idol of the Forum in the whole work.

Not only must the unit be clearly defined, but it should also be the best possible unit of all that might be used. It is easily conceivable, I think, that an enumeration of two or more groups of things will serve in some cases much the same purpose. In other words, statisticians in planning an investigation often have a choice of two or more units, any one of which might furnish, if not the same information as the others, yet approximately the same.

In the collection of statistics which relate especially to criminality there is not one unit alone, but three which might with considerable propriety be used. In fact, they have been used and are now being used. This is a matter, it seems to me, of considerable importance. One investigator has even gone so far as to say that it is not so much the difference in the laws and in their administration that renders a comparison of the criminal statistics of the different countries difficult as it is the difference in the units used.

The three units are: (1) the affair or case, (2) the infraction of the law, (3) the delinquent. These units yield somewhat similar results and the casual observer oftentimes sees no difference among them. It is, nevertheless, true that they are quite different and that each has its own peculiar advantages and disadvantages.

The first unit named was employed for several years in France and Holland. It furnishes a means of measuring the activity of magistrates and courts. It does not, however, indicate the number of individual crimes for which conviction was had or even the number tried. Several crimes might have been brought together for the trial by reason of complicity or connection. Neither does it acquaint one with the number of persons convicted or tried. It may be that only one individual figured in the trial, but this is only a possibility, not a probability.

Von Mayr sees as an advantage of the second unit—the infraction of the law—the possibility of measuring by it the burden which criminality imposes on the population of a country. The objections which are usually brought against the use of this unit are as follows: The number of possible infractions will vary from session to session of the legislature. This does not seem to be a very serious objection since it also applies in principle to each of the other units. The second objection is based on the idea of continuous criminal activity on the part of the individual, which finally leads to his unmasking. Many of the earlier criminal acts are undiscoverable, so that, even though the individual passes through the court, the many infractions of the law, which he has made, do not enter into the statistics. The figures seem in a sense to tell more than they actually do. It is also pointed out that some states count double infractions of a particular species as separate crimes while others consider them as one. This is, of course, an objection founded on the desirability of choosing a unit which will not admit of various interpretations to the end that international comparisons be made possible. Another objection springing from the same idea is that where codes do not consider the continuity of a crime it depends on the judge whether such acts shall be considered as one infraction or two. An objection to the use of this unit, which appears to me to be more basic than any other, arises from the nature of the statistics themselves. They are registration statistics and as such first gain a meaning when brought into relation with other statistics. It would be difficult to find a group of statistics which taken in conjunction with the figures for infractions of the law would yield appropriate ratios. A modification of this unit when used in combination with the third unit is nevertheless a necessary part of the scheme of criminal statistics.

The third unit, that is, the individual himself, is from many points of view the most satisfactory of all. Just as in the science of criminology the emphasis is being placed more and more upon the criminal

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and less and less upon the crime, so also there has been a growing tendency to use the individual rather than his crime as the primary unit in criminal statistics.

The principle of this unit seems patent enough, and yet it has been remarked that no state has succeeded in actually employing it. Suppose, for example, that a man is tried and convicted for two crimes, is he to be counted once or twice? If he is counted once only, then the author of one of the crimes is not included in the statistics even though he is known to the law. If he is counted twice then there will be trouble in bringing these statistics into relation with the statistics of population. A man can die but once, or be born but once, at least from the point of view of statistics; and yet a man who has been found guilty of two crimes may, with good reason perhaps, be considered as two criminals. A variation of this problem is the case where a man has been convicted of two crimes within a year, two separate trials having been had either in the same tribunal at different times or in two entirely distinct tribunals. This situation presents practically the same difficulties as does the first. The number of individuals condemned during any one year is very different from the number of individual convictions. Theoretically, it would seem that only the number of individuals condemned during the year ought to be brought into relation with the population; actually, however, this is not done and the result is a distorted picture, particularly so since the error which comes from counting the same individual twice does not affect all classes of crimes alike. In regard to the first situation, the prevailing practice appears to be to count the individual once among the authors of that class of crimes to which his most serious crime belonged, the more serious crime being that one for which the longest sentence was given.

The following paragraphs (quoted from *Judicial Statistics, England and Wales, 1909*; Part I. Criminal Statistics, Page 32) illustrate the English method.

"(b) The Tables show the numbers of persons prosecuted, not the number of offences. Where therefore any person is prosecuted at the same Assizes or Sessions for several offences, one offence has to be selected for tabulation: and the rule followed is to select that for which the proceedings were carried to the furthest stage—to trial, if there were several indictments, to conviction and sentence if prisoner was tried on several charges. If there are several convictions, the offence selected is that for which the heaviest punishment was awarded. If the final result of proceedings on two or more charges is the same, the more serious offence (as measured by the maximum penalty allowed by the law) appears in the Tables.

"(c) Where, in addition to the offence thus selected for detailed tabulation, the same person is prosecuted for other offences of a distinct character and

charged in separate indictments, the number of these additional charges is given in Columns 27 to 29 of Tables I, III, and V; Column 27 giving the total number of such charges, Column 28 the number resulting in convictions, and Column 29 the number for which separate sentences (not concurrent with those in Columns 11 to 21) are passed. Only distinct offences charged in separate indictments are included in these columns; additional indictments merely varying the form of the charge, and additional charges appearing as counts in the same indictment, are excluded.

"An exception is made, however, in the case of a charge under Part II. of the Prevention of Crime Act, 1908, or Section 1 of the Inebriates' Act, 1898. In the former case, if there is no conviction on the count of being an habitual criminal, or no sentence is passed therefor, no record appears in these statistics; but if the prisoner is convicted and sentenced on the charge, the sentence of preventive detention appears in column 22 as an additional order made on his conviction of the specific offence which has led to his indictment as an habitual criminal.

"In the case of a person convicted and sentenced as an habitual drunkard under Section 1 of the Inebriate Act, 1898, the sentence of detention in an Inebriate Reformatory is given in Column 16, whether it is in substitution for or in addition to a sentence of penal servitude or imprisonment does not appear in this table, but particulars are given in Table LII.

"(d) Where a person is prosecuted for one offence and convicted for another (e. g., committed for murder, and convicted of manslaughter) the case appears only under the offence of which he was convicted."

The working of this scheme, it should be pointed out, may be interfered with by the development of the indeterminate sentence. There are, however, exceptions to this rule. Sweden and Spain, I believe, count an individual as many times as there are crimes of which he has been adjudged guilty. In Italy, the individual is counted after both fashions, the emphasis, as it were, being placed in one group of statistics on the person and in the other group on the crime. As to the case of a man convicted of two or more crimes within the same year, two separate trials having been had either in the same tribunal at different times or in two entirely distinct tribunals, the common practice is to count the individual each time. In Belgium, statistics are compiled which show the number of criminal acts of each individual for which conviction was had during the year.

Perhaps the best scheme is the one that Italy is now following out, which is to use all three of the units. Certainly the information which they individually yield is not the same and there is no question but that we need it all.

ANNUAL MEETING OF THE ILLINOIS BRANCH.

CHESTER G. VERNIER, UNIVERSITY OF ILLINOIS.

The first annual meeting of the Illinois Branch of the American Institute of Criminal Law and Criminology was held in the building of the University of Illinois School of Pharmacy, Chicago, May 9 and 10. The program given was substantially as reported in advance in the May number of the JOURNAL at p. 130. Although the attendance was not as large as the excellent papers and the spirited discussions merited, yet it was a source of gratification to the officers of the society that all present took part in the proceedings and that much interest was aroused.

The Illinois state society was organized June 21, 1911, at a meeting held in the University Law School library. The meeting was called by Judge O. A. Harker, chairman of the committee on organization. A constitution was adopted, officers elected, and plans made for the work of the following year. The May meeting of this year was the first annual meeting of the society.

Judge O. A. Harker, Dean of the University of Illinois College of Law, delivered the annual address of the president. The address was devoted chiefly to the consideration of the desirability of two reforms. First, Sec. 431 of the Criminal Code, making juries judges of both the law and fact in all criminal cases should be changed. Second, Legislation should be enacted making it possible to amend indictments and informations. As long as the grand jury remains, perhaps amendments should not be allowed to go so far as to charge an offence different in character and grade from that presented by the grand jury.

Professor Charles Richmond Henderson of the University of Chicago and International Prison Commissioner for the United States, followed with a paper dealing with crime conditions in Illinois, the need of more adequate criminal and judicial statistics, causes of crime and suggested remedies. The portion of his paper which dealt with statistics will be published later in this JOURNAL. It can not be affirmed that crime is decreasing. Any scientific study of the subject must begin with an improvement of our records. The speaker advocated legislation requiring all courts to keep proper records and

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to make uniform returns to a central state officer. He discussed also the causes of crime and suggested remedies.

Col. Nathan William MacChesney in discussing Dr. Henderson's paper, stated that it was a somewhat startling fact that the Illinois National Guard had been called out oftener in the past three years than in the entire previous history of the state. This would seem to indicate an increase of crimes of a particular kind, growing mainly out of economic disputes and racial differences. He noted with discouragement that the communities so disgraced seemed to feel no reaction, the business men seeming to be concerned only with its effect on business. He spoke further of the fact that while prison officials are becoming more and more interested in the problem of reform of the criminal law, there is still a great lack of interest on the part of the bar and the state's attorneys. The latter are often young and incompetent and the members of the bar practicing criminal law do not as a rule represent the best or even the average of the bar in general. Some of the remedies suggested by him were—to extend the probation law, get statistics of crime, enforce the laws promptly, abolish the twice in jeopardy rule, and give the state the right of appeal.

Professor Robert H. Gault of Northwestern University, and managing editor of the JOURNAL, spoke of causes and prevention of crime in his discussion of Dr. Henderson's paper. He criticised Lombroso's born criminal theory. While statistics showed no direct connection between immigration and crime, yet it does appear that there is an undue proportion of criminals among the children of the foreign born. This he attributed to lack of parental restraint under new conditions, and to the fact that so few of the children of the foreign born continue in school, even to the fourteenth year of age.

Others who engaged in the discussion of the foregoing papers were Judge Gemmill of the Municipal Court of Chicago, Mr. White, Edward T. Lee, Dean of the John Marshall Law School; Professor I. M. Wormser of the University of Illinois College of Law, and Judge Spurgeon of Champaign County.

The first paper of the Friday morning session was by Judge Clyde E. Stone of the County Court, Peoria, on the subject, "Existing Methods of Dealing With Juvenile Delinquents in Illinois and Suggestions for Improvement." It will later be published in full in this JOURNAL.

E. A. Snively, member of the Board of Pardons, Springfield, read a paper on the present status of probation and parole in Illinois, in-

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cluding the adult probation law. He traced in detail the history of probation and parole in Illinois and examined into the question of its efficiency. Mr. Snively thought the adult probation law desirable, but said little of it, since it has been in effect only one year. He strongly approved of the extension of the parole system, and went so far as to advise the placing of all crimes under it, even including murder. He declared that the court or jury should sentence only to prison without term fixed. Sentences as fixed by court and jury are uneven and unjust. This is true of one county, and the discrepancy is even more apparent when different counties are compared. He cited many cases where the jury and even the court and the state's attorney were woefully ignorant of the prisoner's past criminal history, all joining in a recommendation for clemency in cases where the board later found the prisoner to be a hardened offender. He disagreed with a statement of a previous speaker to the effect that all state's attorneys disapprove the parole law.

The first paper of the afternoon session was by Professor Albert M. Kales of the Northwestern University Law School on "Organization of Courts." By an examination of the present methods of organizing courts he showed the difficulty, if not impossibility, of any court becoming expert in any line. The ordinary judge is elected at the age of forty. He is confronted with hundreds of cases of very diverse nature. The ordinary judge has three years at common law, one year in the criminal court, one year in chancery and three years in the appellate court. He has no time to learn anything. He declared that the lack of expertness on the part of courts and the lack of system which precludes expertness, constitute the greatest indictment of our judicial system. Some of the difficulties, including rotation of judges, it is impossible for the courts to change by rule, since they are controlled by statutes and constitutional provisions. Much, however, can be done by legislation without waiting for constitutional changes. Some of the changes advocated by Professor Kales are as follows: 1—Divide the circuit and superior court into a common law and chancery branch. 2—Give each division a presiding judge and give him power of control over docket, calendar, etc. This presiding judge should be chosen by the supreme court. The chief justice may well be left to rotate as at present, for he has no power anyhow. 3—Let these two presiding justices and the chief justice compose a judicial council. 4—Have assistant judges appointed by this council and also have this council appoint masters in chancery. 5—Give the presiding judge of the law branch power to assign judges to care for

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criminal cases. 6—Separate commercial cases and place them on a separate docket for the superior court. 7—Let this judicial council make rules of practice and procedure, prescribe duties of masters in chancery, and regulate the clerk of court. Above all, stop rotation and give each judge as nearly as possible one particular line so that he may have a chance to become expert.

Harry Olson, Chief Justice of the Chicago Municipal Court, thought that much could be done by rules of court without legislation and that the rest should wait until a thorough report could be had by a commission which could propose appropriate legislation and constitutional amendment. For the city of Chicago he suggested that there should be a single court composed of three divisions—circuit, criminal and municipal. This would effect a great saving in expense. Considering one item only, there are now four chief clerks with salaries of \$9000 each. One clerk of a combined court could do the work of all four at a saving of \$27,000. He declared that the bar must take action along the lines of efficiency and economy for courts or outsiders will do so. Already large taxpayers are becoming impatient with unscientific management. He thought that courts should have more power so that they can accomplish results along this line. He enumerated the powers given the Chicago Municipal Court and showed how many economies had been effected. He also thought it highly advisable that courts should meet once a month to discuss their business.

Professor W. W. Cook of the University of Chicago Law School, who followed Judge Olson in the discussion, spent most of his time in a consideration of the question how this society should proceed to reach the best results in its field of work. He felt that the society had been organized long enough to do more than meet and consider questions and pass resolutions concerning them. We must have permanent committees of investigation, and since most of the members of the society are very busy men we should consider the advisability of securing paid helpers if possible. An effort should be made to enlist the co-operation of the State University as is done in Wisconsin. We should co-operate with the national organization and with the other state branches, and no committee should report until it can do so thoroughly.

The last paper of the meeting was that of William N. Gemmill, Judge of the Chicago Municipal Court, on "Criminal Procedure." This paper is published in full in this issue. It was discussed by John F. Voight, Assistant United States Attorney of Mattoon, and

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Professor I. M. Wormser of the University of Illinois. Mr. Voigt expressed the opinion that we should go slow in abolishing the grand jury, since that it works well in country districts, where it often uncovers matters that a prosecuting attorney can not reach. Smaller offences should be prosecuted on information. He approved Judge Gemmill's suggestion that exceptions to the charge to the jury should be made before the jury retires. This is done in the Federal courts and in eighteen states. In addition he recommended the following: 1—That short forms of indictments be allowed. 2—That no informations should be amendable except to change the offence. 3—That writs of error should be allowed to the state on preliminary orders and on the construction of statutes. 4—That reverse should be allowed only for prejudicial error as in U. S. courts since March, 1911.

Professor Wormser closed the formal program of discussion. He developed the point that the Illinois Supreme Court does not at present reverse for error that does not go to the merits of the case.

Action was taken on the following resolutions:

"Resolved, That the president is requested to appoint a committee of five members to prepare a bill providing for an adequate method of securing and reporting to a central state authority the statistics of crime which come to the knowledge of police, courts, and prisons, including reports of crimes whose authors are unknown."

Note—Since the above article was put in type the legislature of the state of Illinois has unanimously authorized the establishment of a state bureau of criminal statistics under the direction of the Board of Charities and Corrections. The text of the law will be published in the following issue of this Journal.

This motion was approved at a meeting of the executive council with the recommendation that the central state authority therein referred to be the state charities commission. The council recommended also that a general committee of five be appointed to care for all matters of a legislative nature. The resolution together with these recommendations was carried by a vote of the society and a legislative committee was appointed.

It was resolved also that in the opinion of the society two more schools of the St. Charles type and one of the type of the Geneva School should be constructed by the State.

C. A. Purdum at the close of the meeting moved that the society should express its approval of the proposal to extend the age limit of first offenders to 25 for the purpose of sending to the reformatory. As it was too late for the executive council to consider this and report back, it was voted to refer the matter to a committee.

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The three resolutions following, recommended by the executive council, were carried by vote of the society :

Resolved, That the Secretary be directed to communicate with the United States Senators and Congressmen from Illinois, requesting their earnest efforts to secure from Congress an appropriation sufficient to publish at the earliest moment the criminal statistics recently compiled by the Census Bureau, and to take such other steps as may be suitable for that purpose.

Resolved, That the Legislative Committee be directed to prepare and cause to be presented in the State Assembly a bill extending the age from fourteen years to nineteen years for children under the supervising powers of the local educational authorities, and vesting them with power to compel the attendance at a useful occupation of all such children as do not attend a school; to the end of preventing that youthful idleness, which is a prolific breeder of crime.

Resolved, That the chairman of the executive committee be requested to negotiate with the executive committee of the State Bar Association, with a view to holding the annual meeting of this Society at or about the same time and place as the State Bar Association, and to securing the publication of its proceedings in the same volume with that of the Bar Association.

The following officers were elected for the coming year :

President—Hon. Orrin N. Carter, Chief Justice, Illinois Supreme Court.

Vice Presidents—William N. Gemmill, Judge, Chicago Municipal Court.

E. A. Snively, Member Board of Pardons, Springfield.

Secretary—Chester G. Vernier, Professor of Law, University of Illinois, Urbana.

Treasurer—Walter W. Cook, Professor of Law, University of Chicago.
Executive Council—

Judge O. A. Harker, ex-officio, Chairman, Dean of the College of Law, University of Illinois and former President of the Illinois State Society.

John H. Wigmore, ex-officio, Dean of the Northwestern University Law School and former President of the American Institute of Criminal Law and Criminology.

Nathan William MacChesney, ex-officio, former President of the American Institute of Criminal Law and Criminology.

George T. Page, of the Peoria bar, former President of the Illinois State Bar Association.

Charles R. Henderson, Professor of Sociology, University of Chicago, International Prison Commissioner for the United States.

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Robert H. Gault, Assistant Professor of Psychology, Northwestern University. Editor of the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY.

James A. Creighton, Judge, Circuit Court, Springfield.

E. J. Murphy, Warden, Illinois State Penitentiary, Joliet.

The report of the committee recommending the above was adopted by the society. At the close of the meeting the newly elected president, Chief Justice Carter, made a brief address. His first official action was to call a meeting of the executive council to plan the work for the following year.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

PROFESSORS CHESTER G. VERNIER AND ELMER A. WILCOX.

ASSAULT WITH INTENT TO KILL.

People v. Connors et al., Ill. 97 N. E. 643. *Specific Intent.* It is assault with intent to murder for one to point a loaded revolver at another, and command him to take off his overalls, and go out and join accused's labor union, where there is an intent to kill if the command is not complied with, though the intent is in the alternative, and is not executed because of compliance with the condition.

CONSPIRACY.

Harris v. Commonwealth, Va. App., 73 S. E. 561. *Monopoly of Fire Insurance Business.* Defendants were charged with criminal conspiracy in creating and maintaining a monopoly in the fire insurance business in the city of Newport News. There was no statute prohibiting such a combination. Held that the charge must show "a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means." The common law did not prohibit the creation of a monopoly by individuals. The laws enacted against forestalling, regrating and engrossing required a wrongful motive to injure others, as by an increase of prices, and applied to provisions, or the "necessaries of life," or "articles of prime necessity," or of "merchandise," or "manufacture in the market." Insurance is in none of these classes. At most the combination charged is an agreement in restraint of trade, but such agreements, though invalid, are not criminal. Hence a combination to accomplish a criminal or unlawful purpose is not charged. The charge does not show any illegal means, or that the acts were malicious, as intended for the injury of others rather than the benefit of the parties to the combination. Hence no common law crime is charged. If such combinations are contrary to public policy, it is for the legislature to prohibit them.

CONSTITUTIONAL LAW.

People v. Persce, (N. Y.) 97 N. E. 877. *Right to Bear Arms.* The Legislature had power to enact Penal Law (Consol. Laws 1900, c. 40) at 1897, making one who carries or possesses any weapon known as a slungshot, etc., guilty of a felony, without requiring proof of an intent to unlawfully use it, construing the statute as prohibiting the carrying of a slungshot, etc., within the immediate control and use for unlawful purposes; the Bill of Rights not invalidating such a statute.

The provision of the federal Constitution preserving the right of the people to keep and bear arms was not intended to affect action by the states.

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CONTEMPT.

Re Merchants' Stock & Grain Company et al., Petitioners. 32 Supreme Court Reporter, 339. A judgment finding defendants in a pending suit in equity guilty of contempt of its authority in violating an interlocutory injunction previously granted in a suit for the benefit of the complainant, and ordering the payment of specified fines, three-fourths of which, when paid, should go to the complainant "as compensation in part for the expenses incurred in prosecuting these contempt proceedings," is punitive instead of remedial, and reviewable on writ of error without awaiting a final decree in the suit in equity.

CRIMINAL INTENT.

State v. White, Mo., 140 S. W. 896. *Mistake or Law.* Defendant was convicted of felony, thereby becoming ineligible to vote. After his discharge from the penitentiary he registered as a voter. His defense was that he disclosed the facts to the registration officers, was told by them that his discharge papers entitled him to vote, and believed that his citizenship had been restored. The trial court charged that this belief would not be a defense. Held that the charge was erroneous. "While it is true that everybody is supposed to know the law, it is nevertheless a fact that the most trained judicial minds often have great difficulty in determining what the law is on a given subject. * * * if it be true that defendant did exhibit his discharge papers from the penitentiary to the registration officers of his voting precinct, and said officers informed him that said discharge entitled him to vote, it would be a harsh rule to say that he can be convicted of felony, because these election officers were mistaken and gave him improper advice."

EVIDENCE.

Diaz v. U. S., 32 Sup. Ct. Repr., 250. *Hearsay; Admitted Without Objection.* Hearsay evidence admitted without objection is to be considered and given its natural probative effect as if it were in law admissible.

FORMER JEOPARDY.

Gabriel Diaz v. United States, 32 Supreme C. Rep. 250. The prosecution for homicide of a person previously convicted of an assault and battery from which the death afterwards ensued does not place the accused twice in jeopardy for the same offense, contrary to the act of July 1, 1902 (32 Stat. at L. 691, Chap. 1369), a 5, enacting a Bill of Rights for the Philippine Islands, especially where the jurisdiction of the justice of the peace before whom the assault and battery charge was tried did not extend to homicide cases. (Lamar, J., dissenting.)

People v. Bevins, 134 N. Y. Suppl. 212. *Different Offenses in Same Transaction.* The Legislature can carve out of a single transaction several crimes, so that the individual may in the same transaction commit several distinct crimes, in which case an acquittal or conviction of one will not be a bar to an indictment for another, under Code Cr. Proc. Sec. 9, providing that no person can be subject to a second prosecution for a crime for which he has once been prosecuted and duly convicted or acquitted.

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FORMER JEOPARDY.

Commonwealth v. Endrukat, Pa., 80 Atl. 1089. Where the insanity of a prisoner at the time of the trial has been set up in defense in a prosecution for murder, and the jury, being instructed to pass on both the question of guilt and of insanity, has returned as one verdict, against the objection of the prisoner, that he is guilty of murder in the first degree, and is insane at the time of trial, and the jury has been discharged, and thereafter the court of its own motion sets aside the verdict and grants a new trial, the prisoner may again be put on trial on the same indictment, the finding that he was guilty of murder being without authority and a mere nullity, which should not have been accepted by the court, so that there was no trial at all of the charge against him, and no jeopardy.

Clarence v. State, 132 N. W. 395. *Waived by Appeal*. Defendant was charged with murder in the first degree and convicted of murder in the second degree. On appeal the conviction was set aside. He then asked for an order that he be put on trial for manslaughter only, as he had been acquitted of murder in the first degree, the Supreme Court had reversed the conviction of murder in the second degree and no new witnesses had been indorsed on the information, so the same state of facts would be presented at the new trial. Held, that the reversal of the judgment and remanding the case for another trial placed the defendant in the same position in which he would have been had there been no former trial. On proper evidence he could have been convicted of murder in either the first or second degree. Hence the denial of his motion was not error.

GRAND JURY.

U. S. v. Lewis, 192 Fed. 633. *Regularity of Organization*. Organization of a federal grand jury was not vitiated because the jurors were sworn and impaneled the day before the date fixed by the court for their appearance; it not being claimed that any of the jurors were incompetent or disqualified, or that accused was prejudiced.

HABEAS CORPUS.

State v. Riley, Minn., 133 N. W. 86. *Not a Substitute for an Appeal*. Relator was convicted on a charge of using "vile and obscene language in the presence of women." The statute made it a misdemeanor to "use in reference to and in the presence of another * * * abusive or obscene language, * * * naturally tending to provoke an assault or any breach of the peace." He brought habeas corpus on the ground that the complaint did not charge any public offense and therefore the court had no jurisdiction and the judgment was void. Held that while the judgment must have been reversed on an appeal, as the complaint did not state the name of the person in reference to whom and in whose presence the language was used, or the language itself and its natural tendency, the relator must be remanded into custody. The court had jurisdiction of the person and of the offense attempted to be charged, and the complaint, though defective, was sufficient to invoke its jurisdiction. But habeas corpus reaches only jurisdictional defects, and cannot be used as a substitute for an appeal or writ of error.

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INDETERMINATE SENTENCE ILLEGALLY IMPOSED.

Ex Parte Forscutt, Mich., 133 N. W. 315. *Treated as Fixed Sentence for Minimum Term.* A statute provided a maximum of fifteen years' imprisonment for burglary. In 1903 an indeterminate sentence act was passed. In 1905 this was repealed, with no exception as to offenses already committed, and a substitute enacted, applying to crimes "committed after this act takes effect." After the act of 1905 took effect petitioner was convicted of a burglary committed in 1904, and sentenced to not less than seven years and six months nor more than fifteen years' imprisonment. At the end of the minimum term, as shortened by the allowance for good behavior, he petitioned for a writ of habeas corpus. Held that an indeterminate sentence could not be imposed under the act of 1903, as that act was not in force when he was sentenced, nor under the act of 1905 as that act did not apply to prior crimes. But the statute providing for the punishment of burglary was still in force and the sentence should be treated as a fixed sentence for the minimum term imposed. That term having expired the prisoner should be discharged.

INDICTMENT AND INFORMATION.

Arseneaux v. State, Tex. Cr. App., 140 S. W. 776. *Sufficiency.* Defendant was convicted of larceny. The indictment charged that he stole property of Hutchinson & Mitchell, a firm composed of Moses Hutchinson and H. L. Mitchell, out of the possession of said Hutchinson & Mitchell, "then and there without the consent of said Hutchinson & Mitchell." Held that it was not sufficient to allege the want of consent jointly, but the non-consent of each owner should be alleged. Reversed and remanded.

State v. Duvenick, Mo., 140 S. W. 897. *Clerical Error.* An indictment concluded "against the peace." Held that the defect was unworthy of serious consideration or discussion. Though the clause was required by the state constitution, it added nothing to the substance of the information. The omission of the letter "t" was obviously a clerical error, and "against" is *idem sonas* with "against."

Hogue v. United States, 192 Fed. 918. *Sufficiency; Clerical Mistake.* An indictment charging perjury under oath before "a competent tribunal, to-wit, before the United States District Clerk for the Northern District of Texas," is not vitiated by the obvious clerical mistake in using the word "clerk" instead of "court."

State v. Silverman, N. H., 82 Atl. 536. *Constitutional Validity.* Pub. St. 1901, c. 273, aa 16, 17, relates to the embezzlement of certain specified things and "any other effects or property whatever" of the principal; and section 18 declares that an indictment for an offense mentioned in the two preceding sections shall be sufficient, if it alleges that the offender embezzled or converted to his own use property of a certain amount, without specifying any particulars of the embezzlement, and on the trial evidence that any property specified in section 16 or 17 to any amount had been embezzled would sustain the indictment. Held, that section 18, in so far as it authorized a conviction on an indictment failing to specifically describe the property embezzled was violative of Bills of Rights, art. 15, providing that no subject shall be held to answer for any crime, unless the same is fully, plainly, substantially, and formally described

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to him; and hence an indictment, charging embezzlement of "property" of R. & Son to the amount of \$595, was fatally defective.

Robinson v. State, Ind., 97 N. E. 929. *Sufficiency.* An indictment can be successfully attacked for the first time on appeal only when it fails to state facts sufficient to constitute a public offense; and an objection made for the first time on appeal will not reach mere uncertainty or a defective statement of the facts or a failure to observe technical formalities which could have been corrected in the trial court.

Under Burns' Ann. St. 1908, sec. 2221, requiring the court on appeal to disregard defects not prejudicing the substantial rights of accused, and which could have been corrected before trial, an objection that the affidavit, on which accused was tried, filed in open court by the prosecuting attorney, was not indorsed as required by section 1990 will not be considered, when raised for the first time on appeal. The court saying, p. 930, "It would be a reproach to the law to require a judgment to be held for naught and the state put to the expense of another trial for a defect which did not prejudice the substantial rights of appellant, and which he could have had corrected before trial, if it in fact existed."

Hendricks v. U. S., 32 Supreme Court Reporter, 313. *Frivolousness of Federal Question.* The contention that an indictment charging subordination of perjury before a federal grand jury did not sufficiently set forth "the nature and cause of the accusation" within the meaning of the U. S. Const., 6th Amend., because it did not "set forth in some definite way the matter or thing which was under investigation at the particular time, so that the defendant may know as to what particular controversy the alleged false testimony is claimed to be material, and how to meet the allegation of materiality," is too frivolous to serve as the basis of a writ of error from the Federal Supreme Court to a Circuit Court, to review a conviction under such indictment, where the description therein of the proceeding in which the perjury was committed is as follows: "* * * Sitting as a grand jury * * * and, among other matters, inquiring into certain criminal violations of the laws of the said United States relating to the public lands and the disposal of the same and the unlawful fencing thereof, which had then lately before been committed within the said district."

INTOXICATING LIQUORS.

Toles v. State, Ga. App., 73 S. E. 597. *Keeping in Place of Business.* Defendant was convicted of the statutory offense of unlawfully keeping intoxicating liquors on hand at his place of business. He was employed to manage and run a poolroom, and there was evidence justifying the inference that he had an interest in the business. Sixteen barrels of whiskey and several empty whiskey barrels were found in the room. All had been shipped, as indicated by their marks, to persons other than the defendant. Some at least had been put into the room in defendant's absence, after the place had been closed for the night, and the officers entered before it was opened in the morning. Held that it is a violation of the law to keep intoxicating liquors on hand at one's place of business when it is closed as well as when it is open to the public. The place where the performance of the duties of a employee is re-

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quired is "his place of business" within the meaning of the prohibition law. As all engaged in a misdemeanor are principals, one who, though not himself an owner, keeps intoxicating liquors on hand at his public place of business, as an employee or agent of the owner, violates the statute. The conviction was affirmed.

State v. Donovan, S. Dak., 132 N. W. 698. *Sunday Closing*. With permission from the police, defendant, a saloon keeper, entered his saloon on Sunday to put coal on the fire and pump air on the beer. He was there about three minutes and did not sell liquor to anyone or take any himself. The court charged that "the statutes nowhere make any exceptions or make any provisions whereby anyone can go into a saloon on Sunday for any purpose whatever." Held, that the police had no power to suspend the operation of the statute or to determine its proper interpretation, hence the fact that defendant had acted in good faith on their suggestion would be no defense, but could properly be urged in mitigation of punishment. As an abstract statement of law, the charge was erroneous, for, though the statute contained no express exceptions, it would not apply to entering the saloon in case of fire, the breaking of a waterpipe, or other unusual circumstance, not incidental to or connected with the conduct of the business. But as the defendant's own testimony showed that he entered for two purposes, one of which was unnecessary and the other incidental to the saloon business, the error was without prejudice and the conviction was affirmed.

Phillips v. State, Ga. Ct. App., 72 S. E. 429. *Liability of Landlord*. Defendant leased a small space at the rear of his store to a tenant who had a pasteboard sign there indicating that he was a fish and oyster dealer. The tenant's stock consisted of about a barrel and a half of bottled whisky, some glasses and spoons, and there were about two barrels of empty whisky bottles. There was no partition between this space and defendant's store. The trial judge charged that if, with the knowledge of the landlord, the whisky was kept in the portion of the store rented to the tenant, the landlord was guilty of keeping liquor on hand at his place of business. Held, that while the charge was not abstractly a correct statement of the law, under the evidence it was not prejudicial. "The landlord must hide his knowledge behind something more substantial than a sign made from a piece of pasteboard taken from the top of a whisky barrel, advertising the sale of fish and oysters consisting of quart and pint bottles of whisky."

LOAN SHARKS.

State v. Davis, N. Car., 73 S. E. 130. *Mortgage on Household and Kitchen Furniture a Proper Classification*. A statute made it a misdemeanor to charge more than six per cent interest on any loan secured by mortgage or otherwise upon articles of household or kitchen furniture. Held that this did not deny to persons within the jurisdiction of the state the equal protection of the laws by making one law for those who loaned or borrowed on such security, and a different law for those who loaned or borrowed with other or no security. The statute made a proper classification, as those who mortgage their household goods are poor or ignorant men, who especially need protection from usurers; in some of the cities there is a class of men against whom such protection is

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necessary; and the loss of those articles necessary for comfortable and decent living entails great suffering on women and children and tends to break up the home.

LARCENY.

Town of Wolcott v. Stickles et al., Conn., 82 Atl. 572. A complaint, alleging that accused stole chickens of a specified value, charges the larceny of "poultry" punishable by Gen. St. 1902, a 1211; the word chickens meaning poultry, and the word "poultry" including domestic fowls, generally or collectively, reared for the table or for their eggs or feathers.

People v. Smith, Ill., 95 N. E. 1041. *Solicitation of the Offense*. G. having been arrested with a large number of postage stamps on his person, and having said he got them of defendant, who was in charge of the mailing department of L., the detectives consulted with representatives of L., and, as then arranged, G. telephoned defendant that he had the money for the last stamps, asking if defendant could get more stamps, and arranged to meet him. L.'s representatives then marked some of its stamps. Defendant later met G., as he had telephoned that he would, bringing \$130 worth of stamps, including some of those marked. Held, that there was no encouragement, soliciting, urging, or advising of defendant by L., or its agents to commit the crime, preventing a conviction, but that the criminal design and intent originated with defendant.

People v. Hunt, Ill., 96 N. E. 220. *Requisites of Indictment*. A common law indictment for the larceny of money, which merely describes the subject of the larceny as a certain number of dollars in lawful money of the government, of a stated value, is too indefinite, and an indictment must contain a description, so as to call to mind the particular coins and bills, and thus identify the thing stolen, to identify the transaction charged, and to notify accused of the particular transaction; and this rule applies where the description is or may be known to the grand jury.

Where an indictment for the larceny of money described the same as lawful of the United States, of the value of \$55, and alleged that a more particular description was unknown to the grand jury, and the prosecutor testified that the money stolen consisted of five \$10 bills and a \$5 bill, and stated that he so testified before the grand jury, and there was no evidence that the grand jury was unable to obtain a particular description of the money, the state failed to prove the averment that a more particular description was unknown, necessitating a discharge of accused from prosecution under the indictment, subject to the right of the state to try him under a new indictment.

LOCAL OPTION LAW.

People v. Eberle, Mich., 133 N. W. 519. *Depriving of Property Without Due Process of Law*. Under a local option law a county voted to prohibit the manufacture and sale of intoxicating liquors. When the prohibition took effect a brewing company in the county had on hand about 1700 barrels of beer which they had been unable to sell. This would become worthless and unmarketable if a new brew were not made and introduced into it occasionally, to keep it alive. The company did this, the beer made after the manufacture and sale had been prohibited being used only for this purpose, and not being

JUDICIAL DECISIONS

old enough to be in a fit condition for drinking. The company contended that it would be taking their property without due process of law if they were prevented from doing this. Held that the manufacture and sale of intoxicating liquors may be regulated under the police power. If the exercise of the police power causes a depreciation in value or loss of property affected thereby, this is incidental to the business engaged in, and does not amount to a deprivation of property without due process of law. The property was not taken for public use but the owner was left free to make any lawful use of it, hence the restrictions governing the exercise of the power of eminent domain do not apply. The conviction was affirmed.

People v. Eberle, Mich., 133 N. W. 519. *Excepting Local Wine and Cider*. A local option statute was enacted in 1889. It was amended in 1899 to permit the sale of wine or cider from home-grown fruits in quantities not less than five gallons, and again in 1903 to permit the sale at wholesale of wine and cider made in the county adopting the law, to parties residing outside of that county. The state conceded that these exceptions were unconstitutional, because they discriminated against the citizens and products of other states. Held that as these amendments did not enter into legislative consideration until long after the original act was in active operation they could be stricken out, leaving the act "complete in itself, and capable of being executed wholly independent of that which was rejected." Hence the statute, as originally enacted, was in force.

OATH.

State v. Browning, Ia., 133 N. W. 330. *Form of Oath*. The ordinary form of oath was administered to two Jewish witnesses. They stated that they regarded it as binding on their consciences. On cross-examination each was asked whether or not there was any other form of oath that he regarded as of higher or greater sanctity or of greater solemnity or more binding upon him than the oath taken. An objection to the question was sustained. Held any form of oath is sufficient that the witness considers binding upon his conscience. It was immaterial that the witness might consider some other form of oath more binding upon him, as in such cases the law does not deal with comparisons. Moreover, objection to the form of an oath must be made before it is administered, or it will be deemed waived. Nor was the question admissible to discredit the witness. If one understands the nature of an oath and assumes to take it as binding upon him he is a competent witness. Hence it was not error to exclude the question.

ORDINANCES.

State v. Staples, N. Car., 73 S. E. 112. *Regulating Billboards*. While the regulation of billboards, standing on private property, based upon aesthetic considerations, is not within the police power of a city, an ordinance prohibiting the erection and maintenance of such boards if the bottoms are less than twenty-four inches from the ground, unless they are erected against a solid wall, is a valid exercise of that power. The requirement is reasonable and necessary to prevent the accumulation of leaves, papers and other waste materials against the board, thus creating a fire hazard to neighboring property, and also to keep the property on which they are erected in a sanitary condition.

PARDON.

JUDICIAL DECISIONS

TRIAL.

State v. Mallahan, Wash., 118 Pac. 898. *At Court House*. Upon the trial of a criminal case, the defendant's counsel stated that a witness was confined to her bed, and unable to attend court, and asked that the jury might go where she was and take her testimony at her home. The state objected and the objection was sustained. Held, that the method and manner of conducting the trial is purely within the discretion of the trial court, except where regulated by statute. There is no absolute right to have any part of the trial take place anywhere except in the place fixed by law. Hence it was not error to deny the request.

Cina et al. v. U. S., 191 Fed. 718. *Conduct of Trial Judge*. Remarks made by the trial judge to counsel for defendants in a criminal case, and his refusal to permit counsel to continue the cross-examination of a witness, held, while error, to have been without prejudice, where the same witness was on the stand, and there was a further opportunity for cross-examination.

Carter v. State, Miss., 56 So. 454. *At Court House*. The defendant, in a criminal case, applied for a continuance on account of the absence of a material witness, who was very sick in his home at the town where the court was held. The court denied the application, and over the defendant's objection, adjourned the whole court, parties, sheriff, clerk, and district attorney to the home of the witness, and there tendered the witness to counsel for the defendant for examination. He declined to examine the witness on the ground that the court house was the place provided by law for the trial of cases. Held, that the defendant could not be forced to trial at any place other than the court house. If he had consented to examine the witness at his home, he could not have objected to the irregularity, but as he refused, it was a fatal error to deny his application for a continuance, and the conviction was reversed.

VERDICT DEFECTIVE.

Suitor v. Lewis, Okla. App., 118 Pac. 412. *Harmless Error*. One of the forms of verdict handed to the jury by the court was defective because it by implication instructed the jury that, if they convicted the defendant of assault and battery, they must both sentence him to imprisonment in the county jail and fine him, while under the statute they might do either or both. The jury adopted this form of verdict. There was a general exception to all the forms submitted and a special exception to one of the other forms. In the general charge there was a correct instruction as to the punishment. The evidence clearly established that the defendant was guilty, not merely of an assault and battery, but of a felonious assault. Held, that it was error in favor of the defendant for the court to charge on the law of assault and battery, of which he cannot complain. Therefore no purpose would be served by granting a new trial on account of the error in the form of the verdict. In the light of the entire testimony, the error was clearly harmless.

Glickstein v. U. S., 32 Sup. Ct. Repr. 71. *Immunity Clause in Bankrupt Act*. The immunity clause in the bankrupt act of July 1, 1898, Sec. 7, Subd. 9, that no testimony given by the bankrupt under command of that section shall be offered in evidence against him in any criminal proceeding, does not bar a criminal prosecution for perjury for false swearing when giving such testimony.

JUDICIAL DECISIONS

WITNESSES.

Commonwealth v. Shooshanian, Mass., 96 N. E. 70. A witness may, in English and without an interpreter, state a conversation held in a foreign language.

Holloway v. State, Ga. Ct. App., 72 S. E. 512. *Effect of Impeachment.* Defendant was convicted of the illegal sale of liquors. The only direct evidence of a sale by the defendant was given by a witness who testified on cross-examination as follows: "I know my character. It is bad. Sometimes I would, and sometimes I would not, believe myself under oath. I believe myself in this case." It was proved that he went into the defendant's house without having any whisky and brought out a bottle of whisky and the change from the money given him to buy it. The defendant testified that she sold him no liquor, but that he had left a basket containing whisky in her house a few days before and that he came in, took something from the basket and carried it out. Held, that though the witness was unworthy of credit, yet the circumstances of corroboration shown by the other evidence might authorize the inference that he was telling the truth in this case. The jury have power to credit a witness unless the facts testified to by him be, according to the common knowledge of mankind, inherently impossible. Conviction affirmed.

Berry v. State, Ga. Ct. App., 72 S. E. 433. *Children.* On examination as to her competency, a girl of twelve testified that she knew right from wrong, that she ought to do right and that it was wrong to tell a lie and right to tell the truth, but said she did not know where she would go after death if she failed to do right. Held, that she was competent. "She could hardly be expected to give a categorical answer to a question which has been from time immemorial, and which still is, puzzling some of the wisest men of all times."

NOTES ON CURRENT AND RECENT EVENTS.

ANTHROPOLOGY—PSYCHOLOGY—MEDICINE.

"Experimental Psychological Study of the Criminal."—In an extract from the bulletin of the Anthropological Society of Brussels, Tome 30, 1911, is a contribution by M. Paul Menzerath, which was originally made to the Anthropological Society of Brussels at its meeting on July 31, 1911. In this contribution Dr. Menzerath summarizes the psychological studies of criminals which he has made in his laboratory. Since memory is in the last resort an affective function, that is, a function of interest, the investigator originally had considerable confidence that substantial results might be obtained from examinations of criminals by the method of word associations. After extensive investigations, however, he has reached the conclusion that at any rate until our methods can be much more refined than they are at present, little of scientific value can be expected from this method. The readers of this JOURNAL will understand that the method in question consists in pronouncing a series of words to an individual under examination and requiring him as quickly as possible after the pronunciation of a given word to respond by uttering one which he associates with the original. The hypothesis is that when the key-word is one which touches upon a secret which the examinee is eager to keep hidden there will be a certain hesitation on his part, and consequently a prolongation of the time passing between the utterance of the key-word by the investigator and the response by the subject. The hypothesis is, furthermore, that the character of the words by which the subject responds may be a source of information with regard to the suspect's association with the criminal act. Laboratory tests in various places in this country and abroad have hitherto led many to believe that ultimately we might attain through this method to a high degree of skill in the detection of the criminal. Menzerath, however, as noticed above, has lost his confidence in this means and in his tests he has substituted therefor a reading test. A series of words is selected as before, some of which relate closely to the situation, the examinee's connection with which is in question, and others are wholly unrelated to the situation. These words are printed, each one upon a card, all in type of uniform size and the cards themselves are of uniform size. They are presented before the eyes of the examinee at a fixed distance which can be determined by preliminary test. The hypothesis is that a word which is relevant to the interesting situation can be recognized more distinctly and consequently at a greater distance than the irrelevant word. This method, of course, is valuable only in the case of individuals who can read. For those who cannot read Dr. Menzerath substitutes an auditory presentation of the word stimulus, the hypothesis being that those words which are closely related to the interesting situation can be heard distinctly at a greater distance than can those which are less closely related to the situation in question.

JAUREGG ON THE DANGEROUS INSANE

The same investigator has reported upon physiological reaction tests such as may be determined for instance by the D'Arsonval Galvanometer. In this case the hypothesis is that when a word closely related to the interested situation is pronounced to the subject or read by him, there will be recorded in the instrument an unusual deflection of the needle, due to unusual physiological or chemico-physiological processes.

The author of the communication referred to in this note makes no extravagant claims whatever. The whole question was freely discussed at the meeting and the opinion was freely voiced on all hands that the whole matter is yet distinctly in the experimental stage.

R. H. G.

Professor von Jauregg on the Treatment of the Dangerous Insane.—

Professor v. Jauregg opposes the notion that a verdict of "unaccountability" (*Zurechnungsunfähigkeit*) for an insane or criminal-insane person should be entrusted to lay (i. e., not judicial) hands. The *acquittal* of an insane person goes upon the tacit assumption that in the alienist and the asylum instead of in punishment lies society's protection. But Austrian laws and institutions contradict utterly this assumption. There is not a single provision in Austrian law or procedure to guide magistrates in cases of unaccountability through mental derangement. It is quite possible that law-makers took it for granted that asylum care would follow automatically in such cases and that no statutory rules were necessary. Yet actually so many cases have come up to take advantage of this anomalous situation that law is travestied and psychiatry has earned a not wholly unmerited discredit.

Various causes have conspired to produce the situation. For example, more acquittals occur than are reconcilable with the expectation that they are to be cared for by asylums. Variations in the number of such acquittals indicate the influence of particular persons or schools in the matter of psychiatry. Judges while offering some counterweight to the psychiatrists have "acquired a taste for liberality in the adjudgment of unaccountability." Differences of opinion between asylum physicians and court psychiatrists arise often from the fact that the condition of the accused varies from time to time; for example, he may be able consciously to manifest more marked signs of mental unsoundness during his trial. Once in the asylum, however, he tries to appear normal; pity then works to set him free. Witnesses also give testimony colored by subjective prejudices. In other cases direct simulation enters. The remedy would be to remand the simulator for retrial. Yet the same performance might be repeated almost *ad libitum*. Such simulators introduce a disturbing element into the asylums, which destroys the *morale* of the whole institution. The tendency, of course, of such institutions, especially where they are likely to be overcrowded, is to get rid of the disturbers. Furthermore, the asylums may refuse to accept a criminal acquitted on the ground of insanity by judge or jury in defiance of psychiatric testimony. But even if the asylum is ready to accept such cases its purpose is often set at naught by escapes, an occurrence much more frequent in asylums than prisons. A long list of cases might be cited illustrating these points to show how social protection often falls between the two stools of criminal procedure and psychiatry. There is hence a crying demand that criminal law occupy itself with care of the criminal-insane after

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trial and commitment. But how? There are three possible ways: 1. By annexes to ordinary insane asylums. 2. Annexes to prisons. 3. Special institutions for the criminal-insane. The first two means having been demonstrated incapable of supplying a solution, a project of law creating institutions of the third type is now under discussion in Austria. But the law is designed to be rather permissive than mandatory, to avoid unjust harshness in certain less dangerous cases; confinement to continue so long as danger to the community lasts; dismissal to be final or subject to recall. This to an American seems sound doctrine and practice, for in no other class of criminal cases does use of the indeterminate commitment appear more imperative. The inmates of such an institution would include dipsomaniacs, epileptic criminals, alcoholic cases complicated with jealousy or other *idéés fixes*; also cases of periodic insanity accompanied with criminality. Thus the population would include many cases not insane in the ordinary sense of the term.

The author praises the basic ideas of this plan, but criticizes certain textual details, especially the variable senses of the words *insane* (*Geisteskrank*) and *dipsomaniacs* (*Trunksuchtiger*). He insists that the text be cleared of all ambiguity regarding the period of detention, and that it be clearly understood that detention should extend not only during the period of mental disorder, but during the period of danger to the public (*Gemeingefährlichkeit*). He further recommends that all unnecessary odium attaching to the name of the proposed institution be avoided and suggests the name *Staatsirrenanstalt* instead of *Staatliche Anstalt für verbrecherische Irre*.

The exact text of section 36 of the proposed law as amended by Herr von Jauregg would read: "Whoever commits an offense punishable by more than six months' imprisonment and on account of unaccountability at the time of the act is not prosecuted or sentenced, shall be remanded to a *Staatsirrenanstalt* if on account of his mental condition or with regard to his habits or the nature of his act he be deemed specially dangerous to the safety of persons or property."

The author tried in vain to have incorporated in the law a provision whereby the local authorities should bear a part of the cost of maintenance of these new institutions. But local unwillingness to assume this burden (a pride in that vicious sort of economy that shifts a community's responsibilities on someone else—a device not unknown to our own American politicians anxious to make "economy records") has forced the central authorities to provide for it. One result of this *Ressortpatriotismus* will be that magistrates will be inclined to send insane-criminals to the ordinary local asylums as heretofore to avoid burdening the new institutions whose maintenance must be provided by the department of justice. A more favorable result is to be anticipated from the provision that will permit alien criminals declared insane to be transported to an asylum of their native land.

In contradistinction to the Austrian plan, which while still far from complete marks a hopeful beginning, neither the German nor Swiss law provides special institutions for criminal-insane. The courts *may*, according to the measure of social danger, order commitment to an asylum, but dismissal rests in Switzerland with the court, in Germany with the police authorities. We agree with Herr v. Jauregg that such a system is reprehensible; it is absurd to set up a policeman

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or judge as an expert alienist. Yet there are certain judicial and administrative aspects to such cases that in our judgment render it necessary for the committing authority, or some special body (like, say, our boards of pardon), to pass upon dismissals. Where, for example, an institution is becoming pressed for room, the management is likely to subordinate the interests of any given individual and of outside society to the very insistent claims of its society-within-walls. Austria, twenty-five years ago, tried the plan of permitting dismissal only with consent of the committing court, but the scheme ran afoul of the higher sanitary authorities (*Sanitätsrat*) and was allowed to drop. The particular form of this plan may not have worked advantageously, but as we see it the principle is sound and should be maintained in some form or other.

One final weakness in, especially the Swiss and German methods of dealing with the irresponsibles, lies in the anomalous position of the habitual drunkard. Magistrates are permitted to commit to an inebriate asylum any habitual drunkard acquitted on the ground of unaccountability. But the law is ineffectual as there are no public inebriate asylums, and the private institutions are based on the principle of voluntary entrance, and dismiss patients who disturb the order and welfare of the institution.

Professor von Jauregg's article is a welcome addition to the discussion of this vexed question of the criminal-insane. A solution will come quickly when we have once for all pitched overboard our old notions of assessing exact personal responsibility and accepted the principle of social responsibility with all the sanctions that principle implies.

A. J. Todd, University of Illinois.

Laboratories of Criminal Anthropology in Europe.—In the *Revue de Droit Pénal et de Criminologie* for January, 1912, is described the work of the laboratory of criminal anthropology established by the Belgian government in 1910. This laboratory is located at the Prison de Forest and is under the direction of Dr. Vervaeck. Here careful study is made of the inmates of the prison. The detailed nature of the examination made in each case is indicated by the schedule used. This provides for general and administrative facts, data with respect to heredity, medical examination, somatic examination which includes anthropometry, the examination of the nervous system which includes psychological tests, psychiatric examination, and sociological and criminological data. As these data are secured they are to be compiled and interpreted so as to determine the causes of crime in Belgium.

The same review for February, 1912, reports that in France the minister of justice, M. Cruppi, has appointed a commission to make plans for the establishment of a laboratory of criminal anthropology. This commission includes among others Senator Léon Bourgeois, the dean of the faculty of medicine at Paris and two other members of the same faculty, representatives of the faculty of sciences at Paris and of the school of anthropology, the directors of the prison administration and of the bureau of judicial statistics, etc.

MAURICE PARMELEE, University of Missouri.

The Legalization of Sterilization.—So much interest is felt in this subject and the various problems relating to asexualization and vasectomy that our readers will be greatly interested to see the views expressed by H. Havelock

THE LEGALIZATION OF STERILIZATION

Ellis, in his recent contribution to the *London Lancet*. We report the letter entire:

A QUESTION IN EUGENICS.

To the Editor of The Lancet:

. . . . "The original question was specific and definite. Is a father, acting in the interests of an epileptic son under age, entitled to procure an operation which will prevent that son from becoming a father? It is a question that will, before long, demand an answer. But it has not so far received an answer. . . . The question is one that can only be discussed profitably in the dry light of intelligence. Moreover, it demands precise knowledge.

"It is surprising to find that several of your correspondents imagine that a question of this kind can be dismissed by talking about a supposed abstract conflict between the individual and the race. A concrete question demands a concrete answer. In this case the possible father is an individual; the possible children would also be individuals. The children of this father are likely to involve a special burden of anxiety and expense, while his own condition will render him unfit to cope with that burden. Under such conditions the children are likely to be a misery to themselves and others. There is no conflict here between the individual (the possible father) and the race (the possible children). Their interests are identical. Evidently it is dangerous to plunge into academic disquisitions of a pseudo-metaphysical character when asked to reply to a simple concrete question.

"There is another point on which some of us feel that we have been led astray. No doubt there is a wide range of variation in what the phrenologists call philoprogenitiveness. But in some of your correspondents this bump must be developed to a really alarming extent. It is good to have children, so long as one is reasonably assured that these children will be well-born, and that one is able to provide for them. But it is another matter to have children at all costs. We must not allow our philoprogenitive impulses to grow so hysterical that we become unable to see that many people remain happy and lead useful lives without children, and even with no prospect of children. . . . In many cases, it is probable, sterilization and freedom will prove the only proper alternative to isolation without sterilization. Life under such conditions is not worth living, exclaims one of your correspondents; he would rather retire to a colony of degenerates. Very well. *Chacun à son gout*.

"It is not easy to feel enthusiastic about sterilization, any more than about any other operation for the relief of suffering humanity; it would be better to avoid the need for it, and its scope must always be limited. It is surprising, therefore, to find that one of your correspondents has so much faith in the enormous efforts of asexualization that he fears lest, by abolishing human suffering, it will remove the need for moral helpfulness. One may note in passing that the moralist who would perpetuate human misery in order to cultivate his own moral helpfulness is a moralist who must be severely isolated in inverted commas. (Let me add that I am sure he does himself an injustice and is the victim of his own controversial ingenuity.) But this fear is uncalled for. Everyone who is acquainted with the actual condition of things today knows that, far from being threatened by the disappearance of the need for moral helplessness, we are being overwhelmed by the burdens involved by

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our moral helpfulness. The favor with which sterilization is now viewed is largely due to the hope that, if wisely and discriminately carried out, it may help us to cope with those burdens.

"It is not, I believe, quite correct that sterilization has been legalized in Switzerland. The reference is probably to the operations performed at the Cantonal Asylum of Wil. (The portion of the sixteenth annual report of the asylum dealing with the matter is reproduced in the *Psychiatrisch-Neurologische Wochenschrift*, No. 2, 1909.) In these cases the operation (actual castration), carried out on two men and two women, was performed not only by agreement with the relatives and the local authorities, but with the eager consent of the patients themselves, who were thus enabled to return to freedom and to work. No compulsion being exercised, no legislation was necessary. This is as it should be. There are very serious objections to compulsory sterilization.

"This discussion has made it clear not only that it is desirable (let me repeat) to cultivate the dry intelligence, but also that an extended knowledge of the elementary facts of sexual physiology and psychology would be highly advantageous. Here we see a medical man who apparently confuses vasectomy with castration; there another who believes that vasectomy is fairly comparable with crypt-orchidism; again, a third who, one suspects, imagines that sterilization involves impotence. It is also evident that some among us, however young in years, are still living in the past, not realizing what men and women are thinking and doing to-day, nor the ideals which are inspiring them.

"In these matters of eugenics the growth of both general and professional opinion (even since the Royal Commission on the Feeble-minded issued its report three years ago) is most remarkable to those who watch the development of opinion. It is idle to ignore it."

Signed by H. HAVELOCK ELLIS, West Drayton, Sept. 4, 1911.

From the *Medico-Legal Journal*, September, 1911.

R. H. G.

Alcoholism.—The relationship of alcoholism to bad mental make up is discussed by Hugo Hoppe, of Königsberg (*Gross' Archiv*, Vol. 46, 1912). It will be recalled that the whole question has been very much upset by the researches of Pearson and Elderton, and Fehlinger gave much support to these investigators. Sturgis, Horsley and Holtscher have attacked the work of Pearson and Elderton, and the present writer allies himself with the more orthodox views that excessive alcoholism is not only a cause for psychical and mental deterioration, but is often a sign itself of such deterioration.

Research in animals has shown that alcohol passes very quickly to the sex glands, and that it impairs and may arrest the motion of spermatozoa. It exerts the same toxic influence on germ cells that it does on all animal cells, and beings developed from such cells may easily show inferiorities and faulty development. Observations by authorities on the subject show the degeneracy of children conceived in drunkenness. Of 97 children so conceived, Lippich found 83 suffering from disease or deformity; e. g. tuberculosis, feeble-mindedness, epilepsy, idiocy, etc. Bezzola, computing the dates of conception of 1896 feeble-minded children from the dates of birth, found that the greater number of such conceptions occurred at three periods of the year, corresponding with the times of greatest excess in drinking, while the number of conceptions even-

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tuating in normal children was proportionately less at these periods. Many teachers in wine growing districts have observed that seven years after an especially good wine year, they receive a remarkably poor set of scholars.

In 37 out of 39 chronic alcoholics (Weichselbaum), more or less atrophy of the parenchymatous testicular tissues was found, with sclerosis of the interstitial connective tissue; this degenerative change found thus advances and is premature only in alcoholics. Similarly (Lancereaux) the ovary is pathologically diminished, especially the cortical portion. Degeneration of the sexual organs may progress so far as to complete absence of spermatozoa, but before this stage is reached, there are all grades of pathological change where though the germ cells are diseased, fertilization and development are still possible, with a sub-normal offspring resulting. Experiments by Combemale, Hodge, and Faure on dogs, and of Laitinen on rabbits and guinea pigs concur in showing that the effect of alcohol in varying quantities, and for varying periods, is as follows: (1) Greatly increased percentage of still births; (2) greatly increased mortality among the offspring shortly after birth; (3) deformities, infantilism, and disease were markedly in the litters of such animals; (4) the average weight of the offspring of the alcoholized animals was distinctly less than that of normal animals; (5) the average gain in weight of such animals was also less; (6) if the offspring of alcoholized animals was mated with a normal animal, the resultant issue also showed degeneracy; (7) resistance to bacterian invasion was greatly lessened in the progeny of alcoholized animals; (8) the litters of these animals succumbed more rapidly to tuberculosis. Clouston demonstrated pathological changes in the brains of guinea pigs whose parents had been alcoholized. Statistics of the children of alcoholic, compared with those of tuberculous parents, show in the former a greater number of still births and abortions, a greater mortality in the first year, and in the second to the fifth years of life (Arrivé) Prof. V. Bunge observed the percentage of tuberculosis, nervous and mental disorders in children to be in proportion to the greater or less intemperance of their parents. Finally the extensive investigations of Laitinen in Finland, yielded the following conclusions: (1) A larger percentage of abortions and miscarriages among alcoholics; (2) more deaths among the children of drinkers than among the abstinent; (3) more weakly children in the families of alcoholics; (4) in the offspring of alcoholics, more colic in infancy; (5) the average weight of children of the same age and sex greater in the families of the abstinent than in those of alcoholics; (6) the first tooth in children of abstinent parents appeared on an average earlier than in those of drinkers.

In conclusion, the mass of evidence seems to point decisively to the belief that alcohol, as an acute intoxicant at the time of conception, and acting as a chronic poison, has a degenerative influence on offspring, and this even when taken in quantities commonly adjudged moderate.

SMITH ELY JELLIFFE, M. D., New York City.

Psychiatry in the German and Austrian Criminal Codes.—The November issue of *Archiv fuer Soziale Hygiene*, contains an exceedingly interesting article on psychiatry in the German and Austrian criminal draft codes, showing the advances made in the last 20 years in both countries.

PRESUMPTION OF SANITY AND BURDEN OF PROOF IN HOMICIDE CASES

The German code stipulates that a man cannot be condemned if it can be proved that at the time of the perpetration of the criminal act he was unconscious, idiotic or insane and not master of his mind. In Austria, a criminal action is not punished as such, when the accused was totally deprived of the exercise of his senses, if he was full of liquor or other drugs or under 14 years of age so that he failed to grasp the criminality of his act. Extenuating circumstances are conceded to those whose *liberum arbitrium* was more or less reduced in both countries, but Germany does not reckon drunkenness amongst such causes. Criminals of this kind must be confined in special institutions and cared for as their special case demands.

The German draft code does not allow the imprisonment of minors under 14 years of age. Capital punishment and life-long confinement are excluded for minors below 18; also confinement in a workhouse and depriving of civic honours. If the act is a result of neglected education, the court might send the minor, besides his prison sentence, to a reformatory or another institution. Special prisons shall be built for minors, the feeble-minded must be kept apart. Austria does not punish criminal action of a minor under 14 as a crime. Minors under 18 cannot be condemned for it either, if their mental and physical development are such that they could not recognize the wrong of their acts.

Minors must be sent to reformatories if the parental supervision is insufficient.

Habitual drunkards can be placed under guardianship in Germany. If on account of being dead drunk at the time of committing a criminal act, the man escapes punishment, he may be sent to a sanitarium for alcoholics until he has completely reformed. Austria confines such drunkards in institutions for the criminal insane, until they have recovered.

Both draft codes recognize the value of better protection of society by preventive action.

Immorality among persons of the same sex is increasing. So far women could not be punished for their acts; the new German code makes it possible. Men and women whose profession it is to lend themselves to such acts, might be condemned to hard labor. Austria's law are no way more lenient. From the few extracts it can be seen that there is not much difference in both draft codes as to the treatment of psychopathic cases. It would not be absolutely impossible with some good will to bring about a more uniform legislation on these matters in both countries.

VICTOR VON BOROSINI, Chicago.

Presumption of Sanity and Burden of Proof in Homicide Cases.—"The Criminal Court of Appeals of Oklahoma holds that, sanity being the normal and usual condition of mankind, the law presumes that every person is sane; hence the state in a criminal prosecution may rely on such presumption without proof relative thereto. But when the defendant in a homicide case produces sufficient evidence to raise a reasonable doubt of his sanity, the law then imposes on the state the burden of establishing the sanity of the defendant, the same as any other material fact necessary to warrant a conviction; and if, on consideration of all the evidence in the case, the jury have a reasonable doubt that the defendant at the time of the commission of the act charged was mentally

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competent to distinguish between right and wrong, or to understand the nature of the act he was committing, he must be acquitted.

"The provision of the Oklahoma statutes that 'An act done by a person in a state of insanity cannot be punished as a public offense' does not in effect modify, but is supplemental to, the provision that 'All persons are capable of committing crimes, except those belonging to the following classes: * * *

4. Lunatics, insane persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, on proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.' Under these provisions the test of criminal responsibility for committing an act, which is a crime under the law, is the mental capacity to distinguish between right and wrong as applied to the particular act, and to understand the nature and consequences of such act, or knowing its wrongfulness the defendant is not criminally responsible, if by reason of insanity he did not have the will and mental power to refrain from committing such act.

"It cannot be denied that the defense of insanity is frequently interposed in homicide cases when all other means of avoiding conviction and escaping punishment is hopeless. For this reason, insanity as a defense is almost always viewed with distrust, and it is a popular belief that it is the last resort of desperate criminals. Injustice is thus often done to a defendant who, in the judgment of his counsel, has legitimate ground for interposing this defense, and who must therefore at the outset overcome this sentiment of popular distrust. The court believes the danger is that indignation at the crime and distrust of this defense will cause jurors to be incredulous of its evidence, and thus the actually insane may be unjustly convicted. This result can only be avoided by fully and justly determining this issue the same as any other fact entering into the question of a defendant's guilt. The idea of punishment, when associated with this unhappy malady, is revolting to the instincts of humanity. Modern research has done much to elucidate what was formerly very obscure touching the true pathology of insanity, although no invariable or infallible test of the existence of insanity has ever been found."—From *Journal of the American Medical Association*, March 30, 1912. R. H. G.

Prospectus of the School of Applied Criminological Science of the University of Rome.—We have reached the point where even the sciences of crime and punishment can no longer be taught from the professional chair. Wherever oral platform teaching is not complemented by practical exercises, students find it difficult to learn the method of research; nor can they become aware of, educate and perfect their personal intellectual tendencies for science, for the professions, or for public office. For this reason, in several modern Universities Experimental Laboratories of Law have been established for the teaching of private law, as well as public law, and the Social Sciences.

Modern Criminology cannot be only a theoretic exposition of philosophic and juridical principles—it must also be a physical and psychic study of the criminal, and of the environmental conditions that urge him to crime. It must be a technical investigation into the general and specific evidences of crime; it must be an experimental demonstration of the behavior of defendants and witnesses, in especial, during criminal trials, and of sentenced prisoners in jail. It

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must be an exact idea of partial reforms and of the effects of these which are every day being introduced into the life of all civilized countries. It must be an objective examination of actual criminal trials as they are found in the law reports, an examination that will analyze them as well from the psychologic and the social points of view as from the procedural and juridical sides, and so to discover how law and jurisprudence work out in the daily life of the people. It must also be a school of forensic oratory.

For these researches and practical exercises, the presence and the example of the Professor in the midst of his students, in the face of an actual man, or a real trial, or of evidence, is a very useful complement. The instructor teaches the method of work while operating before the students, and, guided by the light of the scientific thought which he imparts from the cathedra disperses the clouds in which are wrapped crime and criminal, and prepares scientists, professional men and functionaries for their work. For these persons, practice is nothing but theory in action, and theory nothing but the live and fertile result of observation and experiment.

With these standards in view, and noting that there will now be ample room at the University of Rome, devoted exclusively to the Experimental Institute founded in 1905 in the Faculty of Law, the undersigned have decided to organize, in addition, a criminalistic section, thus instituting a School for the Application of Juridico-Criminal studies with the following courses:

Prof. S. Ottolenghi—Somatic and Psychic Examination of the Delinquent.

Prof. A. Giannelli—Clinical Study of Insane and Neuropathic Delinquents.

Prof. S. DeSanctis—Experimental Judicial Psychology.

Prof. A. Ascarelli—Practical Exercises in Legal Medicine.

Prof. A. Niceforo—The Technic of Judicial Examination of the Criminal. Criminal Sociology. Judicial and Prison Statistics.

Prof. E. Ferri, and Prof. S. Longhi—Theoretic and Practical Examination of Criminal Trials. Questions of Penal Jurisprudence and Legislation. Exercises in Debate Peculiar to Criminal Trials, and in Forensic Oratory. Exercises in the Technic of Prisons.

R. F.

COURTS—LAWS.

Criminal Procedure in Canada.—On page 29 of the last issue of this Journal, fourth line from the bottom, the statement, "but the accused may demand that he be bound over to prefer an indictment" should be, the "accuser."

At the bottom of the same page the statement is made that if a case is made out the accused is committed for trial with or without bail as seems just. This is not exactly correct. If the accused is committed for trial he can be admitted to bail only on an order from a judge of the county court or court of King's Bench. Under section 696 of the criminal code, however, when a person is charged with certain indictable offenses and the evidence is sufficient to put the accused on his trial but does not furnish such a strong presumption of guilt as to warrant his committal to jail, the justice, jointly with some other justice, may admit to bail. In other indictable offences under the same circumstances, one justice may admit to bail.

SELECTION OF JURORS IN PHILADELPHIA

At the bottom of page 30 the statement is made that no bill can be laid before the grand jury by the Crown counsel without leave of the court for any offenses except such as is disclosed in the deposits before the magistrate. Section 873 of the criminal code provides that the Attorney General or anyone by his direction, or anyone with the written consent of a judge of any court of criminal jurisdiction or with the written consent of the Attorney-General may prefer a bill of indictment for any offense before the Grand Jury, and that any person may present a bill of indictment with the consent of the court, and this is so whether there has been a hearing before justices or not.

R. B. GRAHAM, Deputy Attorney-General, Winnipeg, Canada.

Selection of Jurors in Philadelphia.—The manner in which jurors are selected and drawn in Philadelphia is described by T. Elliott Patterson in the February number of the *University of Pennsylvania Law Review*. This duty is performed in Philadelphia by a "Board for Superintending and Managing the Drawing and Selecting Jurors," which consists of all the Judges of the Courts of Common Pleas and the Sheriff, making as now constituted, sixteen members. The Board also has a clerk. The Board must select, prior to December tenth, in each and every year, from the list of taxables a sufficient number to constitute the several panels for the ensuing year. This number is now about 12,000. As early in September as possible in each year the Board is furnished with a list of assessables, which is printed, divided up and bound in separate ward books. The Board then determines upon the number of names necessary for the coming year, and this number is apportioned among the wards. A day is then fixed and one of the Judges and the Sheriff draw alternately by lot ballots, each containing the name of a member and ballots each containing the number of a ward until the full allotment of names of members and the number of wards has been exhausted. The clerk marks in each book the name of the member to whom allotted and the proportionate number of names to be marked. When the names have been marked by the members they return the books to the clerk, who writes on separate slips of paper the name, address, occupation and ward of each person selected. The slips of each ward are checked with the ward book and a day is fixed on which the members bring in their respective allotment of slips, together with typewritten lists of the same. The sheriff produces the wheel, which is at all times in his custody, and the clerk of the Board produces the key. The Sheriff in the presence of the Board, unlocks the wheel, empties it of all names remaining over from the former year's drawing, and the members in turn deposit their respective allotments of written slips in the wheel, when the same is again locked and returned to the custody of the sheriff, while the key is taken by the clerk. When the sheriff receives the venires a day is fixed and the sheriff, in the presence of one of the Judges, unlocks the wheel and draws therefrom the number of names required, while the clerk records them in the jury book, which has been duly arranged in the order of the different rooms, and ruled and numbered in exact accordance with the number of jurors to be drawn for each room. Separate envelopes, endorsed to correspond with the jury book, are also prepared. In these the number of names required for each room are placed and at the end of the drawing they are handed up to the Judge to seal and initial, and returned to the clerk in

THE DELAY IN WOLTER'S CASE

custody for the Board until the drawings for the entire year have been completed. The clerk of the Board then takes charge of the jury book and the envelopes, has the names, in alphabetical order, with the occupation, residence and ward of each juror arranged in typewritten lists for each court room called for in the venires. From these lists the sheriff prepares his notices to the persons whose names have been drawn for service, and each court room is furnished with printed copies for use at the trials. One of the copies of the lists furnished to each room is printed on cardboard, from which the names are cut by the clerk of the court or crier of each room and placed in the trial jury box of that room to be drawn promiscuously therefrom by the clerk of the court at the trial.

E. L.

The Delay in Wolter's Case.—On March 24, 1910, Albert Wolter killed Ruth Wheeler, a 15-year-old child, who had gone to his flat in search of employment, responding to a decoy advertisement inserted by him in the newspapers. Two days later her friends found there the charred bones of her corpse concealed in the fire-place and in a burlap bag. The horrible details of the crime under indescribable conditions and the stolid indifference of the morally degenerate criminal, caused the entire population of the City of New York with one voice to demand speedy justice. The prosecution pressed the case with all celerity. Wolter was placed on trial on April 18, 1910, and was convicted on April 22. The lapse of but 34 days between the commission of his crime and the imposition of the death sentence upon him was a model of what can be done.

Wolter's attorneys took the inevitable appeal. This appeal could have been, it certainly should have been, disposed of within three months at the very most. The wheels of justice, however, moved as slowly now as they had moved speedily before. It was not until Jan. 29, 1912, that Wolter was made to pay the penalty for his infamous offense; in short, not until the law's delays in his case had assumed the proportions of a public scandal. Twenty-one months—almost two years—elapsed between his conviction and execution.

The defendant, be it noted, was not a rich man. There were no powerful interests aiding him. There was no hint of corruption. There was no resort to "influence." There was simply a typical, and by no means an unusual, example of the slow, cumbersome and uncertain administration of the criminal law. The notoriety of the case simply served to focus rather more than ordinary attention upon its demoralizing delays.

In a letter signed "R. C. T., New York City," appearing in the "Nation" of Feb. 8, 1912, the writer indicates that of 119 appeals in cases of first-degree murder in New York from 1900 to 1912, only 39 were disposed of within a year—in other words, less than one-third. Nine took over two years. In the Cascone case, for instance, the delay was 32 months; in that of Sexton, 34; in that of Patrick, 38; in that of Smith, 47. The delay of 21 months in the Wolter case was, therefore, in no respect unusual. It was merely the ordinary, everyday example of "breakdown."

This brand of justice fails to deter from crime. Sure, sane and swift administration of the criminal law exerts a quite different effect upon evildoers. Such delays as occurred in the Wolter case are fraught with most baleful con-

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sequences. The learning, ability and ingenuity which is now spent in explanation and extenuation would serve, if rationally applied, to bring about a new era under which such abominations could not be. That such reform is perfectly feasible, English and Canadian experience conclusively demonstrates.

I. MAURICE WORMSER, University of Illinois.

The Magistrates' Courts in the City of New York. A Review of the Chief City Magistrates' Annual Report for 1911.—The Report of Chief Magistrate William McAdoo, of the 1st division of the City of New York, has just appeared. It is a very interesting report, and shows that a great deal of good has been done to better the conditions of Magistrates' Courts in the city. The City of New York has great influence over other places in the country, and it may be instructive to outline the report of the Chief Magistrate.

If I may speak from my own experience, I should say that great improvement has been made in the physical qualities of the courts. These qualities needed radical transformation. Some of the worst dens in the City of New York were the courts. They were dirty, squalid, ill-ventilated, foul, dingy caverns. There are still several courts, the physical conditions of which could be much improved. But it is cause for some joy to think that during the past year so much has been done to make the courts to which the poor in such large numbers go tolerably clean, moderately light, quiet, dignified, decent places for the administration of law. There is now, in addition to the better physical condition of the courts, a better moral atmosphere. Citizens, as a rule, are treated with courtesy and respect, and their complaints are listened to with patience and examined into with care. There is less suspicion of favoritism and of outside influences at work. People are beginning to feel that justice is more evenly and more honestly administered. Furthermore, the large troop of shyster lawyers that used to hang on and pick up cases in the courtroom and outside is gradually being exterminated. The Fifth District Court on One Hundred and Twenty-first Street in the Harlem District, is the busiest court in the city. Two years ago, in the immediate neighborhood, could be seen innumerable lawyers' shingles swinging in the wind and fastened to the walls of houses, and many windows were overspread with the names of lawyers. But now all those things have vanished; offices are empty and lawyers' signs are no more. Out of at least twenty-five offices there now remain two or three, and very likely these two or three will go out of existence in the very near future. This is due to the fact that the court rules are strict; no lawyers or persons of any sort are allowed to solicit business in the courtroom or in the halls outside. These rules, I am glad to say, are rigidly enforced. The Chief Magistrate is to be congratulated and thanked by the citizens of New York for making such a different place of the Magistrate's Courts from the places they once were. People get justice now without having to pay a high price for it, or, indeed, any price at all.

The report begins by taking up the changes that have been made in the courtrooms. The old platform, or bridge, in front of the bench has been removed. The defendant, his counsel and others are separated from the bench to a proper distance. There is now a witness chair. The iron grill work which was a screen running from seven to eight feet into the air from the top of

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the bar enclosure, and which separated the audience from the proceedings within the bar enclosure, has now been removed. The arrangement and the construction of the complaint rooms is now such that privacy is properly protected, and the rooms are made accessible only to citizens who have business there. The freedom of the detention pens from any public or private exploitation, and the consequent security of the defendant from being solicited, imposed upon, or black-mailed, is another feature. In short, all the arrangements were made so that the courtrooms now resemble in all features the courtrooms of the higher courts.

Under the new law, a House of Detention for women was to be provided. No such building or quarters have, as yet, been built or rented. But the provisional House of Detention is now connected with the Women's Court. The Night Court for women is a court which has been much spoken of and which attracts a large number of people who profess to have a great interest in sexual and social problems. Four Magistrates hold this court. They are, therefore, under constant observation and subject to the closest criticism. The old law prescribed a physical examination for women who had been convicted, and if the physical examination disclosed the fact that the person was suffering from a venereal disease, she was sent to the hospital for treatment. This law created a furore among the women of the metropolis, and among some intelligent men, who maintained that no discrimination should be made with respect to sex. If a physical examination was prescribed for women, that examination should also be prescribed for men. Upon the ground of the law's unconstitutionality, the law was declared null and void. A new law ought to be drafted applying to both men and women. But for such a law there is at present very little hope. The women who are convicted for soliciting upon the streets are fined a sum not exceeding \$10.00, or sent to the reformatories designated by law, or sent to the workhouse for a period of not more than six months; or, if they be first offenders, and they show hope of improvement, placed upon probation. The system of fining is an abominable system. Aside from the fact that it is money earned by the shame of some inhabitants of the city and placed into the city's coffers, it is unwise, because the effect of it is to keep the poor women in degradation all the more, since the fine is either paid by the women or, in nine cases out of ten, paid by the cadet, or the owner of the bed-house of which the unfortunate is an inmate. In the former case the fining drives the woman to renewed exertions in breaking the law, and in the latter case the payment of fines puts the woman under obligations to those unspeakable male creatures who live on these women. It is interesting to note that the Chicago Vice Commission, after a long examination, also declared against fines. The Reformatory should be the place for most of these women.

The greatest element, perhaps, in the work of the Magistrates' Courts for the last year has been the increasing use of the summons. This is in substitution of the old warrant and of arrests without warrant. For a great many minor offences, especially violations of Municipal Ordinances, the summons has shown itself to be of great value. Out of 5,000 summonses issued by the policemen of the city only three were not heeded. And of the three persons who did not heed the summons by appearing in court the following morning to answer to the charge, two appeared the next day after the return date of the

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summons. And for only one a warrant was issued. The method pursued by the policeman is as follows: Let us suppose a person is walking through the park. He steps upon the grass; he is approached by a policeman and told that he has done a wrong act; the pedestrian retorts in unkind language; the policeman gets angry; the pedestrian ditto, and so increases the anger of the policeman. The policeman thereupon pulls out of his pocket a book of summonses. He detaches one of the summonses and asks the name and the address of the individual before him; he puts the name upon the summons, and the address in his own pocketbook, and, presenting the summons to the former irate, but now very fearful law-breaker, he tells the violator of the Municipal Ordinance to appear in court the next morning before the Magistrate. Let us, again, suppose that an automobile has been traveling at a rate faster than the rate allowed by the law. Instead of the policeman's arresting the chauffeur on the spot, the policeman gives him a summons and tells him to present himself in court on a set day.

There is no doubt that for a great many of the small, petty violations of law the use of the summons saves a great deal of time and annoyance to the public, and a great deal of money to the city. Its use should be extended. It has been repeatedly shown that the privilege involved in its use is appreciated.

The Chief Magistrate says that there has been a great deal of criticism of Magistrates. That is true. It is true also that criticism of Magistrates in cities is a perennial happening. These men are charged with paying very little attention to cases, with becoming irritable too easily, and especially with minimizing serious complaints. These charges are sometimes based upon truth. But a great deal of allowance ought to be made in cases of these men who sit upon the bench and pass upon eighty cases a day. The solution of the problem here is to be found in decreasing the amount of work that is required of Magistrates by adding to the number of judges. And, in fact, we see the Chief Magistrate asking for at least two more judges, and recommending the re-districting of the city, in order that certain courts of town may not be crushed with business.

The probation system worked admirably. The new law provided for the appointment of ten men and ten women officers. Of course this number is very meagre; and in order that effective work may be done the number should be increased at least three-fold. But we should not blind ourselves to the fact that these twenty people have done much to lessen the burden of families and to make life better worth living than it used to be. The system has especially been serviceable in the Domestic Relations Court. Fewer husbands who neglected to support their families have now to be sent to prison, and more are made to pay the amount imposed by the court. The probationers are now impressed with the fact that probation means something. If they break it they go to prison. The former method had no teeth in it. The present probation officers have been kind and attentive, and have shown a large human sympathy. They have brought about in the Domestic Relations Court fifty-two reconciliations. This figure may or may not mean a great deal to the outsider, but those who have had any experience in this court, as has the writer of this note, will be aware of the fact that the number indicates something which is not specious, but real. Many of the people who go to the Domestic Relations Court are for-

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eigners, and they do not yet speak the English language. Fifty-one per cent of those who came last year were not citizens. Very few appeals have been taken from the two Magistrates who hold this court. Deserted wives no longer have to elbow with rowdies and murderers, loafers and solicitors, in other Magistrates' Courts, and take their chances for redress with hundreds of other cases.

The Night Court for men is a necessity. A large number of men and boys who are arrested for trivial offences are brought here, and within a few hours they are acquitted, fined, imprisoned, bonded, or reprimanded. Those who are discharged go back to their homes and to their work the next morning. The Day Courts are saved additional labor, and the old-time bail-man is no more required. The work of the court is very large. Both the Night Courts for men close at 1 A. M. unless the police notify them that additional cases are on the way.

The Chief Magistrate gives a lurid picture of the menacing army of boys and young men between the ages of 16 and 25 who compose a very troublesome element in the life of the city. They have no reverence for anything, are devoid of respect for law, are subject to no parental control, are cynical, viciously wise beyond their years, utterly regardless of the rights of others, and firmly determined not to work for a living. They terrorize the occupants of public vehicles; they disturb the peace of the neighborhood, and they have no regard for common decency. The problem presented by these youths is a difficult problem for the Magistrate. The Chief Magistrate recommends that the Magistrates make commitments in certain cases of these offenders between the ages of 16 and 30 to the New York City Reformatory for Misdemeanants.

The machinery of the Courts has been systematized and centralized. The Chief Magistrate's office is now a central authority for information, publicity, and redress of grievances. All cases are reported to this office by cards, which are properly sorted and looked after when they reach the office. The names of all bondsmen and the amount of bond are sent there and a book is kept showing the names of those who go on bonds. This serves as a check upon professional bondsmen. All returns on appeal are made in this office. All fingerprints are sent there and kept in steel filing cases. The Chief City Magistrate has charge of the supervision and direction of all employees connected with the courts, and he has the power of arbitrary suspension. His office keeps daily and minutely careful inspection of the work of these employees, and so conduces to more finished work on the part of the subordinates. Nearly all the warrants issued by the police for the suppression of gambling and disorderly houses are issued by the Chief City Magistrate and made returnable in the District Court. These numbered last year some thousands. The probation system is centered in this office. All questions of amendments to existing laws which may affect these courts are referred to this office by the city authorities for information and advice.

Two joint meetings of the Manhattan Board of Magistrates and the Brooklyn Board of Magistrates, the former Board belonging to the First Division, and the latter Board belonging to the Second Division of the city, are annually held in order to beget uniformity of procedure and practice.

The Magistrates' Courts are courts through which over half a million in-

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habitants of the city pass every year. Most of these persons are foreigners. They judge us by what they see in these courts as to whether justice is honestly and impartially administered in this country. The Magistrate holds a very responsible position. He should have courage, fairness, patience, integrity, intelligence, and humanity. At his best, he should have a vocational temperament, in addition to his knowledge of the law, and his high intelligence. Those people who come before him are as children. They are just opening their eyes to see the light of our institutions. The Magistrates have it in their power to make it possible for them to see this light, and to make them devoted lovers of our country.

R. F.

Attitude of Kentucky Courts Toward Technical Errors in Criminal Cases.—The case of *Overstreet v. Commonwealth*, decided by the Kentucky Court of Appeals in March, 1912, and reported in Volume 144 South-western, page 751, is an example of the fact that the Kentucky Court of Appeals does not permit technical errors in criminal cases to defeat the administration of justice. There is not, and has not been for many years, any complaint about reversals by the court for immaterial reasons. On the contrary, the established rule of the court is not to reverse a case for any error unless it substantially prejudices the rights of the accused. The practice in the court is fully and accurately stated in the *Overstreet* case, and furnished quite a contrast to the rule that prevails in some jurisdictions.

OSCAR E. WOLFE, Frankfort, Kentucky.

An Example of Canadian Justice.—The following is an account of a case before the Court of Appeal in Toronto, January 16th, 1912, which had been tried before Justice Riddell and a jury, November 13th, 1911. It was originally published in the Ontario Weekly Notes, March 6th, 1912:

The prisoner was tried on a charge of murder before Riddell, J., and a jury, at Toronto, on the 13th November, 1911. It appeared that he had been watching for one Longheed upon the street, and shot him several times, killing him almost instantly. The defence was insanity. The medical evidence was, that the prisoner was insane, incurably so; that he understood the nature and quality of the act, and that it was wrong in the sense that it was forbidden by the law; but he had lost the power of inhibition, and could not resist the impulse he had to kill Longheed.

Riddell, J., charged the jury: "It is not the law that an insane man may kill whom he will without being punished for it. It is not the law that an insane man may kill another and escape punishment simply because he is insane. There have been hundreds of insane persons who have killed others, and who have been executed, both in England, whence we take our law, and in Canada, in which we live. * * * Life would not be safe under such circumstances. There is one in every three hundred persons in most countries * * * of persons who are insane, in one way or another, and it would never do if the law were such that one man out of every three hundred—that is, in Toronto, something over a thousand people—could go out and slay at will without being brought to task and punished by the strong arm of the law. * * * A man is not to be acquitted on the ground of insanity unless his mind is so affected by the insanity

PROHIBIT PUBLISHING DETAILS OF CRIMES AND ACCIDENTS

that he is not capable of appreciating the nature and quality of his act and of knowing that such act was wrong. It is not the law here, as it is said to be in some countries, that, if an insane person, who is capable of appreciating the nature and quality of the act and of knowing that it is forbidden by law—for that is the meaning in this connection of the word 'wrong'—yet has what is called an impulse to do the act, which impulse he cannot resist, then he is to be acquitted on the ground of insanity. * * * I charge you as a matter of law that it is not enough for the prisoner to have proved for him * * * that he had lost the power of inhibition—the power of preventing himself from doing what he knew was wrong. * * * It is your duty to find a verdict of guilty if you find that the prisoner killed Longheed * * * and at the same time it has not been proved to your satisfaction that the condition described by Dr. Bruce Smith was not his actual condition—in other words, if he killed the man, and it has not been proved that his condition was not as Dr. Bruce Smith says it was, he is guilty of murder, and it is your duty to find so."

The prisoner was convicted and sentenced to death.

Riddell, J., refused to reserve a case upon the question whether the prisoner, being undoubtedly insane, could be executed.

Riddell, J., reserved a case, upon the above charge, as follows: "Was I wrong (to the prejudice of the prisoner) in charging the jury that, even if the prisoner was insane, if he appreciated the nature and quality of the act and knew it was wrong, they should not acquit on the ground of insanity, and that the existence of an irresistible impulse did not (even if they believed it to exist) justify an acquittal on the ground of insanity?"

The case was heard by Moss, C. J. O., Garrow, Maclaren, Meredith, and Magee, J. J. A.

T. C. Robinette, K. C., for the prisoner.

J. R. Cartwright, K. C., and E. Bayly, K. C., for the Crown, were not called upon.

The court answered the question in the negative, and affirmed the conviction.

WILLIAM RENWICK RIDDELL, H. J. C.

To Prohibit Publishing Details of Crimes and Accidents in the District of Columbia.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that it shall be unlawful for any person, corporation, or association to print or publish in any newspaper or other publication in the District of Columbia an account of any murder, or alleged murder, or any other actual or alleged crime, suicide, or other accident, injury, or tragedy of any kind wherever the same may have been committed or happened, or alleged to have been committed or happened, other than a mere statement of the fact that such a crime, tragedy, or accident has happened or is alleged to have happened, without details or comments of any kind with respect to such crime, accident, or tragedy, or in respect of, or about, any person connected with or related to or alleged to be or to have been connected with or related to the same.

Sec. 2. That any person, corporation, or association who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and shall be fined not less than five hundred nor more than five thousand dollars, to which

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may be added imprisonment in the District Jail or Workhouse for not exceeding one year.

The above bill was drawn and introduced by J. D. Works, U. S. Senate.

Authority of County Attorneys in Kansas.—Kansas has statutes authorizing county attorneys to subpoena witnesses and to make investigation (before starting prosecution) of violations of liquor laws, bucket shops and gambling places, similar to the powers of grand juries (grand juries are rarely used in Kansas). Recently the attorney-general has publicly expressed the view that such investigations could be made possible in felonies as well as a few misdemeanors. The writer expressed the same view at a law enforcement meeting at Topeka last winter.

J. C. RUPPENTHAL, Judge of 23rd Judicial District, Russell, Kan.

Proposed County Court for Philadelphia.—An Act to establish a county court for the County of Philadelphia and prescribing its powers and duties regulating the procedure therein and providing for the expenses thereof.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same, That in the County of Philadelphia there shall be and hereby is created a court of record to be known as the County Court, to be composed of one judge for each 200,000 of population or fractional part thereof, where such fractional part exceeds 100,000 such population to be determined from time to time by the latest census of the United States.

Section 2. The judges of said court shall be learned in the law, shall be elected by the qualified electors of the County of Philadelphia, shall hold office for a period of ten years, if they shall so long behave themselves well, and shall receive a salary of \$7,000 per annum, payable monthly, excepting the presiding judge, whose salary shall be \$7,500 per annum. The term of office of the elected judges of the court shall begin on the first Monday of January next following their election.

The first judge or judges of said court shall be appointed by the Governor by and with the advice and consent of the Senate, if then in session, and shall hold office until the first Monday of January following the next general election, at which his or their successor or successors shall be elected.

The first elected judges of the court shall be chosen at the general election next following such appointment. Succeeding elections for the said office shall be held at the general election preceding the expiration of the term of any judge, or at the following election, in case of vacancy by death or otherwise where such vacancy occurs not less than three calendar months before such general election. The vote for said judges shall be cast and counted according to law and return thereof shall be made without delay by the prothonotary of said county to the Secretary of the Commonwealth, who shall ascertain and certify the result to the Governor who, in turn, shall issue a certificate to the person or persons so elected.

Whenever a vacancy occurs by death or otherwise in the office of judge or when upon the taking of any new census the said county shall be entitled

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to an additional judge or judges, the Governor shall appoint in the manner provided by law.

At the organization of the court the Governor shall designate one of the persons appointed by him as presiding judge of the court and shall designate the priorities of the expirations of the respective commissions of the other judges, and upon other judges being elected to said court for the same term they shall draw lots for priority of expiration of commission, the result of which they shall certify to the Governor, and the judge holding the original commission first expiring shall at all times thereafter be commissioned as the presiding judge of said court.

Section 3. The court shall be open 12 months in the year for the transaction of business at the county seat.

Section 4. The County Court shall have a seal for the use of said court, which shall contain the name of the court and the word "seal," which seal shall be affixed to all writs of summons, transcripts and other official certificates issued by or under the direction of said court. The seal of the court shall be in the custody of the clerk of said court.

Section 5. The Prothonotary of Philadelphia County shall be the Chief Clerk of the court hereby created and shall assume and perform all of the duties of clerk thereof. All other necessary assistants shall be appointed by said court and their compensation shall be fixed and paid out of the treasury of Philadelphia County in the manner in which other county expenses are now fixed and paid by law, and the duties of such assistants (except as in this act set forth) shall be determined by a majority of the judges of such court.

Section 6. The court hereby created shall have jurisdiction—

(a) In all civil actions, both in assumpsit and trespass, wherein only a money judgment is sought to be recovered of not more than \$1,000, and in all actions of replevin in which the sum demanded or the value of the property replevied does not exceed \$1,000, except in cases where the title to lands or tenements may come in question.

(b) In all proceedings brought against any husband or father wherein it is charged that he has without reasonable cause separated himself from his wife or children or from both or has neglected to maintain his wife or children and in all proceedings where any child of full age has neglected or shall neglect to maintain his or her parents not able to work or of sufficient ability to maintain themselves.

(c) In all cases of appeals from summary convictions and from judgments in suits for a penalty before a magistrate or court not of record as provided by law.

(d) In all cases involving the jurisdiction of the Court of Quarter Sessions of the Peace, wherein any defendant or defendants are juvenile prisoners, covering all the jurisdiction now maintained by what is known as the "Juvenile Court."

(e) The jurisdiction hereby conferred in clauses (b), (c) and (d) shall be exclusive.

Section 7. The procedure in said courts in all civil actions shall be substantially as follows:

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(a) The plaintiff may file with a clerk of the court at the county seat a written statement of his demand verified by affidavit, or may make to the clerk his complaint orally, whereupon the clerk shall reduce the same to writing, which shall be signed and sworn to by the plaintiff, and said clerk shall thereupon issue a summons under the seal of the court, requiring the defendant to appear at a time and place designated in said summons to answer the plaintiff's complaint and a copy of the plaintiff's statement however prepared shall be served with the writ. The time of said hearing shall be not less than ten days nor more than twelve days from the date of said summons.

(b) Upon the date fixed in said summons or such other date to which the cause may have been duly adjourned by order of the Court, and which shall not be less than seven days after service of the summons upon the defendant, the parties shall attend with their witnesses and the cause shall be heard by one or more of the judges of said court, who shall hear the parties and their witnesses and counsel, if any, and the decision of the judge or judges hearing the cause shall be rendered at the conclusion of the trial or at such other time not more than five days thereafter, as may then be designated for that purpose, and said judgment shall forthwith be entered upon the docket of said court.

(c) In all actions for the recovery of money on any contract express or implied the defendant shall at least two days before the time fixed for hearing the summons or within such further time as the Court may allow, upon cause shown, file with the clerk of the court an answer duly sworn to setting forth fully the nature and character of his defense to the plaintiff's demand or he may make a statement of such defense orally to the clerk, which shall be reduced to writing by the clerk and sworn to. If no answer be filed the Court upon the trial shall enter such judgment as upon the plaintiff's statement plaintiff may be entitled to recover, and if an answer be filed as aforesaid all material averments of the plaintiff's statement which are not denied by the answer shall be deemed and taken to be true. In actions *ex delicto* the Court shall enter such judgment as the plaintiff may be entitled to recover upon the evidence.

(d) In the action of replevin, desertion and non-support cases, juvenile criminal cases and appeals from summary convictions and judgments for penalties, the practice shall be as is now provided by law.

(e) Service of the writ of summons and of copies of plaintiff's statements shall be made in the same manner as is now provided by law for the service of writs of summons in personal actions and may be made by the sheriff of the county, by a constable of the county, or by such persons as may be appointed by the Court for that purpose, as shall be determined by the Court.

Section 8. Upon request in writing filed with the clerk by the plaintiff at the time of filing his statement of claim or by the defendant upon filing his defense, accompanied by the payment of a jury fee of \$4 by the party making such request to be taxed as part of the costs of the case, the Court shall direct trial by jury in the manner now provided by law, the jurors to be summoned and paid as they are for the Courts of Common Pleas of said county, provided, however, that when a jury trial is demanded the Court shall make

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a separate list of such cases from time to time, as are put at issue and proceed to the trial and determination of said cases at the county seat.

Section 9. Either party may within 10 days after the entry by said Court of any judgment in any civil action appeal therefrom to the Court of Common Pleas of said county by taking and perfecting an appeal in the manner following:

The party appealing shall procure from the County Court a transcript certified under the seal of the court showing the proceedings had in said cases and shall file the same in the office of the Prothonotary of said county, and at the time of filing the same shall also make affidavit that the said appeal is not taken for the purpose of delay. If such appeal be taken by the plaintiff he shall give bond with surety conditioned for the payment of all costs accrued or likely to accrue, and if the appeals be taken by the defendant he shall give bail absolute with surety for the debt and the interest and costs accrued and likely to accrue. The sureties upon such bonds shall be approved by a judge of the County Court within 10 days after the entry of judgment in any civil action. Either party may apply to any Court of Common Pleas of said county or any judge thereof for leave to appeal the case to the Common Pleas Court. And if such appeal be allowed, then upon filing the certified copy of said order or allowance, the transcript shall be filed with the Prothonotary as above provided, but said appeal shall not operate as a supersedeas unless the Court or judge allowing such appeal shall so order.

Any party shall be entitled within 10 days from the date of judgment or within such further time as the Court of Common Pleas may grant to a writ of certiorari, to remove the record to any Court of Common Pleas of said county in the manner as now provided by law, in regard to writs of certiorari issuing out of said Common Pleas, but such certiorari shall not operate as a supersedeas unless bail absolute for said judgment, interest and costs shall be given and approved by the Court of Common Pleas, from which such writ of certiorari issues.

Section 10. A defendant who shall neglect or refuse in any civil action brought in said court to set off his demand, whether founded upon bond, note, penal or single bill writing, obligatory book accounts, or damages of assumption against a plaintiff, which shall not exceed the sum of \$1,000, shall be and is hereby forever barred from recovering against the party plaintiff by any after suit, but in case of judgment by default the defendant, if he has any account to set off against the plaintiff's demand, shall be entitled to a re-hearing before said court within 30 days on proof being made either on oath or affirmation of the defendant or other satisfactory evidence that the defendant was absent when the process was served and did not return home before the return day of such process or that he was prevented by sickness of himself or other unavoidable cause, and the said court shall have power to render judgment for the balance in favor of the plaintiff or defendant as justice may require. Each party shall have the same right of appeal or certiorari from said judgment as though a separate suit had been brought therefor.

It shall be the duty of the defendant desiring to avail himself by way of set-off, defalcation or recoupment of his demand against the plaintiff to file a statement of such counter-claim with the proper clerk of the court on or before

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the date designated in the writ of summons for the trial of said action, unless the time for the filing of such statement be extended by the Court.

Section 11. Upon rendition of the judgment of the County Court the party to whom such judgment is awarded shall be entitled to file in the office of the Prothonotary of said county a transcript from the docket of the County Court, showing the judgment so rendered, which judgment shall be entered on the judgment index of said county and from the date of such entry shall bind the real estate of the party against whom judgment is rendered, and thereupon the judgment creditor shall be entitled to preserve and continue the lien of or enforce such judgment by execution attachment or other process in the same manner and to the same extent as though it had originally been entered in the office of the Prothonotary upon confession. The Prothonotary shall apportion the said judgments among the several Courts of Common Pleas of said county as nearly equally as practicable. But upon perfection of an appeal from such judgment or the granting of a certiorari operating as a supersedeas as herein provided the lien of such judgment on real estate shall be thereby removed.

Section 12. The said court shall cause to be kept proper dockets in which a record of all proceedings in each case brought in said court shall be entered, and which in all actions shall show the names of the parties, their counsel, if any, and the addresses of the parties or their counsel, where and upon whom service of notices may be made, the date on which the complaint was made, the manner and date of service of summons upon the defendant, the date of trial, the nature of the plaintiff's demand and of the defendant's answer, and the kind of evidence upon which the same may be found, the judgment of the Court and the date upon which the same was rendered.

Section 13. The said court shall have power to permit such amendments to be made, either in respect to the names of the parties, the pleadings, or its records, as shall be necessary for the ends of justice, and it shall also have power to grant adjournments to regulate the manner of serving notice upon the parties and their counsel and to extend the time within which any act may be required to be done by the provisions of this act, excepting only the time within which an appeal is required to be taken and perfected and the decision of the Court rendered after trial. Said court shall have the power to open or strike off its judgments upon proper cause shown at any time prior to the perfecting of an appeal therefrom, and thereupon a certificate of the order of this court shall be filed in the office of the Prothonotary by the party in whose favor such order is made, and any lien theretofore obtained by filing a transcript of such judgment shall be thereby removed.

Section 14. The said court is empowered to issue writs of subpoena under its official seal into any county of this Commonwealth to summon and bring before the Court any person giving testimony in any cause or matter pending it under the penalties hitherto appointed and allowed in such cases under the laws of this Commonwealth, but no subpoena shall issue to summon a witness from any other county of the Commonwealth except after an order made by a judge of said court upon cause shown.

Section 15. The said court shall have power to establish rules for the conduct of business of the court and from time to time alter and change the same,

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but no rule shall require the parties to file written pleadings other than as required by the provisions of this act. Any clerk of said court shall be empowered to administer oaths or affirmations.

Section 16. The Court may establish rules authorizing the taking of testimony by deposition of witnesses residing out of the county or State, or who, by reason of age, sickness or other infirmity are unable to attend the trial or whose presence cannot reasonably be had and may authorize the taking of such testimony in such manner not inconsistent with the laws of this Commonwealth as the Court shall deem proper.

Section 17. Every party shall have a right to appear and to plead his cause in person or by counsel admitted to practice in the Courts of Common Pleas of said county.

Section 18. The County Commissioners of the said county shall provide suitable accommodations and facilities for the transaction of the business of the said court.

Section 19. The fees and costs for all witnesses, writs, entries, and other services charged for shall be the same in amount as the charge for the corresponding fee, writ, entry or service in the Courts of Common Pleas of said county and shall follow the judgment.

But no costs shall be required to be deposited or secured in advance except in the case of non-resident plaintiffs upon order of this Court.

Section 20. All acts or parts of acts inconsistent herewith are hereby repealed.
EDWIN M. ABBOTT, Philadelphia.

Decision of the Italian Court of Cassation.—The January-February number of *Il Progresso del Diritto Criminale*, contains several decisions by the Court of Cassation—the highest court of criminal appeal—which show that the Italian judge deserves the title of jurist. He has a knowledge of psychology and sociology which he brings to bear upon his legal decisions, making them juridically. The Court, however, in a recent divorce case (report below), have justly shown that it has the stamina necessary to enforce the law as it finds it—a rare quality in these days of recall.

In two recent decisions, the defense of uncontrollable impulse has been admitted, governed however, by a juridical and psychological regulation. Provocation can now be pleaded in the Italian criminal courts to lessen the sentence, but only when the “unjust” (provoking) action was instantaneous and the reaction immediately followed. The use of the word reaction deprives the unwritten law of all its objectionable features.

In another case, the Court disposed summarily of an appellant, who defended a charge of assault and battery on a man on the grounds that it was but an incident to the commission of a felony (the rape of the prosecutor’s daughter) and that, therefore, the defendant had been already punished once in his conviction for that crime.

JOHN LISLE, of the Philadelphia Bar.

An Italian Divorce Case Reported by Professor Tuozi.—Professor Tuozi of the University of Padua, reports an interesting divorce case in the January-February number of *Il Progresso del Diritto Criminale*. Mrs. X was

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guilty of adultery, upon the discovery of which fact, her husband in a fit of jealousy, killed her lover. For this he was convicted and served his term. Upon his release, however, he did not go back to his wife but lived openly with another woman. Four years after his discovery of Mrs. X's adultery, she began divorce proceedings, to which he successfully pleaded under the statute the similar offense on her part within five years. She waited a year and again filed her libel, to which he this time pleaded, under the statute, more than three months' notice of his offense. The two lower courts held this plea good, because the wording of the statute was that "three months' knowledge of the fact" was a bar. Their decision was reversed on appeal to the Court of Cassation, on the grounds that while her disability under the five year provision existed, she could not legally have knowledge of "the fact." This decision Professor Tuozi thinks—and we agree with him—had more logical than juridical value. From the narrow legal standpoint, the first provision was not of the nature of a statute of limitations or disability proper, but was a defense. From the broader point of view, it effected injustice in allowing the original guilty wife to go free for all time, while it punished the husband, who at most had only followed her lead. Professor Tuozi points out how much better the Roman law was in this particular, which required the libellant—who could, however, only be the man—to prove his life clean ("pudice vivens"). The decision, however, can be justified if the court's view of the provision for five years is correct; i. e. that it was merely a disability, but, if this provision was not a disability but an essential part of the right, it seems that the decision was wrong. The Court's willingness, however, to enforce the law as written in the face of criticism is one that may commend itself to many American conservative publicists at this time.

JOHN LISLE.

PENOLOGY.

Prison Contract Labor. "While Governor of New York Mr. Roosevelt said in a message to the Legislature: 'Under the present laws (of New York) none of the products of our own prisoners are put upon the open market to compete with the products of free labor; but the products of convicts of other states and countries are brought into this state and sold in competition with the products of our free labor. As under the decisions of the courts the state is powerless to prevent this, it is to be wished that there could be National legislation on the subject.'

"Such National legislation is now before Congress. Representative Charles F. Booher, of Missouri, has introduced a bill to the effect that all convict-made goods transported into any state or territory shall, upon arrival, be subject to the laws of such state or territory just as if they had been manufactured within its own borders. This bill has been reported favorably by unanimous vote of the Committee on Labor, and has passed the House. It has yet to be acted upon in the Senate. If it passes, it will relieve the manufacturers and the free laborers of New York, Illinois, Iowa, Louisiana, and South Dakota of the baneful competition of convict-made goods. These states have what is known as the public use system for the disposal of such goods. In these states prison-made goods, instead of being thrown upon the open market in cut-throat com-

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petition with the products of free labor, must be purchased by the state departments and institutions at the prevailing markets rates for their own use. It is probable that other states would enact similar laws were it not for the knowledge that the purpose of such legislation is in practice largely defeated by the sale of prison-made goods brought in from other states. Should the Booher bill be enacted, these state laws would become fully effective.

"Under the prison contract labor system the State sells the labor of its convicts to contractors for a small amount per head per diem—usually forty to sixty cents. The contractor then extracts from the prisoner as much work as he can. The more he can force out of him, the greater the profits on his contract. He is in effect the master, and the prisoner his slave. There is, however, this important difference between the contractor's relation to the convict and that of a master to his slave. The master owns his slave, and hence has a selfish interest in his life, health and efficiency. The contractor does not own the convict, and hence has no selfish interest in his physical well-being. If the convict dies, it costs the contractor nothing, and there are plenty more to take his place. Is it any wonder that a leading prison contractor once exclaimed, "This beats having slaves all hollow!" Yes, this modern survival of slavery has a great advantage, from the dollars and cents point of view, over the old form.

"The prison contractor is supplied free of rent with factory buildings, storage warehouses, and grounds inside the prison walls. He is also given free heat, light, and power. The chief commodities made by prison contractors are hollow-ware, shirts, overalls, chairs, boots and shoes, brushes, mats, and brooms. It is claimed by prison contractors and the advocates of the system that it fits the convicts to earn an honest living when they go out. Hollow-ware making is practically monopolized by prison contractors. Therefore the discharged prisoner who has learned this trade must commit another crime and be recommitted to prison in order to practice it. The making of shirts and overalls is, of course, needlework. Inside the prisons men do this work, while outside it is done by women. When the man of a family is sent to prison, his wife and daughter must very often gain their subsistence in the needle trades. In such cases the convict husbands and fathers are placed in cut-throat competition with their wives and daughters. The State first deprives the innocent women of a family of the support of the men, and then forces the men into ruinous competition with them. Meantime these men are being trained in a woman's trade which they do not and will not follow on being released. The making of brooms and mats is the industry in which the blind chiefly excel. It is the trade in which their infirmity appears to be least of a handicap. Factories for the blind for the making of brooms and mats are being established both through State aid and by private philanthropists. The convicts in this trade depress prices and wages while in the prisons, and after their release, if they use their training at all, they compete directly with the blind. In all the prison contract trades there is a vicious circle. By their cheap labor in the prisons the convicts lower prices and wages in these trades outside. When they come out, in the rare cases when they have opportunity and inclination to follow their prison trades, they must do so at a scale of wages they themselves have lowered.

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"Those familiar with the conditions have long felt that convict-made goods spread diseases. The National Committee on Prison Labor has recently gathered data which not only prove this to be the case, but provide legal evidence sufficient to establish the fact in court. In a recent investigation, for instance, of a prison in Maryland, the investigators came upon such cases as this: In the shop of a shirt company 190 men were at work. The company paid the State for their labor at the rate of thirty-five cents per day per man. The shop turned out about two hundred dozen shirts a day.

"The doctor admitted that many of the workers had tuberculosis, and many others looked as if they had. The investigators inquired about one hollow-chested man who seemed particularly ill. They learned that he had been sick for five days, but the doctor had been too much engrossed with fifteen cases of typhoid fever in the prison hospital to attend him. Furthermore, as the hospital was full, the doctor had no means of caring for him, even if he had had the time. This sick convict expectorated feebly over shirts and packing-cases as he worked. These very shirts, packed in these same cases, have since been distributed and sold in various parts of the country. The shop was so dirty that if it had been a sweatshop on the East Side of New York City it would have been closed by law until properly cleaned and fumigated. Two convicts with mumps were found lying with their bandaged heads resting on piles of shirts. In short, the shirt company was distributing throughout the community mumps and tuberculosis as well as shirts.

"A bill similar to the Booher Bill has been defeated in Congress for the past fifteen years or more. If the Booher Bill is passed by the Senate and signed by the President, it will sound the death knell of the prison contract labor system in this country. There are powerful and sinister forces seeking to prevent, now as formerly, this outcome."—From *The Outlook*, P. 13, May 4, 1912.
R. H. G.

Probation Rules of the Children's Court of Buffalo.—Rule 1. Chief Probation Officer.—The probation officer designated by the judge to act as chief probation officer, shall, subject to the direction of the judge, be the administrative head of the probation department of the court. He shall superintend the work of all other probation officers; require them to observe the provisions of the probation laws and of these rules; keep informed concerning their work and conduct, and report to the judge concerning negligence, incompetency or misconduct on the part of any probation officer; secure and instruct volunteer assistants; have general charge of the probation offices, attend to the official correspondence of the department; superintend the making of reports by probation officers, and the keeping of records and accounts; oversee all financial transactions of the department; secure the co-operation whenever necessary of officials and other persons and agencies in Buffalo and elsewhere; compile statistics; publish an annual report; and perform such other duties as are prescribed in these rules and as man properly devolve upon them. He shall study the needs of the probation system, and when necessary make recommendations to the judges for its improvement. On or before the first day of February of each year, the chief probation officer shall file with the judge a statement of the appropriations needed by the probation department for the ensuing fiscal year.

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Whenever the chief probation officer is absent from the office for any substantial length of time the judge shall designate another probation officer to act as chief probation officer during such period of absence.

Rule 2. Probation Officers.—All salaried and all volunteer probation officers shall observe all the provisions of the probation laws and of these rules, and shall obey all lawful instructions and orders of the chief probation officer, provided that the chief probation officer shall not make unreasonable demands on the time or convenience of volunteers. All salaried probation officers shall devote their entire time to probation work, and shall have no other occupation, business or profession. Whenever any salaried probation officer is incapacitated by illness or is otherwise unable to perform his duties, except during vacation, he shall immediately notify the chief probation officer; and any volunteer probation officer having a probationer under his care and about to be out of the city for more than one week, shall also notify the chief probation officer. Each salaried probation officer shall have an annual vacation of two weeks.

All probation officers shall respect scrupulously the constitutional rights of all children and other persons with whom they have dealings. No probation officer shall represent to any child or other person that by virtue of his office he possesses any powers or rights which he does not possess. No probation officer shall attempt to proselyte or in any way to interfere with the religious beliefs or practices of any child or adult brought before the court. No probation officer shall use his position for political or partisan purposes.

Rule 3. Offices.—There shall be a probation office in the Juvenile Detention Home, and another in connection with the part of the court devoted to the trial of adults or at such other places as may be decided upon by the judge. Each office shall regularly be kept open during such hours as shall be decided upon by the chief probation officer with the approval of the judge.

Rule 4. Supplies and Expenses.—All supplies for the probation department shall be ordered and distributed by the chief probation officer upon approval by the judge. Each salaried probation officer shall keep an itemized account of all expenses incurred in the performance of his official duties, and on the first day of each month shall submit to the chief probation officer a bill, duly sworn to, for the preceding month's expenses. No such bill shall be paid unless approved in writing by the chief probation officer and the judge.

Rule 5. Preliminary Investigations.—Unless otherwise directed by the court or judge, the assignments of probation officers to make preliminary investigations concerning children and adults brought before the court shall be made by the chief probation officer. In making such investigations no probation officer shall question any defendant as to his guilt or innocence, or shall endeavor to secure information on this question. The reports of probation officers on preliminary investigations shall be in writing, and shall state the sources from which the statements made were obtained. So far as desirable and practicable the probation officer making an investigation shall appear personally before the court or judge to explain or supplement the written report. Unless otherwise ordered by the judge, a copy of all reports of preliminary investigations shall be filed with the probation records.

Rule 6. Placing Defendant on Probation.—No child or adult defendant, unless well known by the judge or probation officer, shall be placed on pro-

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bation until after a preliminary investigation by a probation officer. When a child or adult defendant is placed on probation, the probationer, as soon as possible thereafter, shall be instructed concerning his probation, by the chief probation officer, or in his absence by another probation officer. Such chief or other probation officer shall give the probationer a written statement of the period and conditions of the probation and take a written acknowledgment therefor, and shall instruct the probationer concerning the purposes and requirements of the probation. If the probationer has been ordered by the court to pay, while on probation, restitution, reparation or a fine, such probation officer shall instruct the probationer concerning the payments he is to make, and shall furnish him with a copy of the official receipt he is to receive for each payment. The chief probation officer, unless otherwise directed by the judge, shall designate the probation officer who is to supervise the probationer and shall arrange for an early meeting between the probation officer and the probationer. The chief probation officer, with the consent of the judge, may at any time transfer a probationer to another probation officer. Female probationers shall be placed under the supervision of female probation officers.

Rule 7. Period and Conditions of Probation.—Unless otherwise directed by the court or the judge, the original probationary period shall be one year, subject to such modifications as the court or judge may subsequently order.

The judge may authorize the chief probation officer to determine requirements of probation supplementary to those determined by the court or judge.

Rule 8. Supervision and Aid of Probationers.—Each probation officer, so far as practicable, and unless otherwise directed by the chief probation officer, shall visit each probationer under his care at least once a month, and shall require each such probationer to report in person to him at least weekly. The chief probation officer shall see that the reporting by probationers to the probation officers is carried on in such a manner as will secure reasonable privacy and will minimize the mingling of probationers. Neither boy and girl probationers, nor juvenile and adult probationers, shall be allowed to report personally at the probation office at the same time.

Rule 9. Probationers Not to Leave Jurisdiction Without Permission.—No probationer, unless so authorized by the court or judge, shall be permitted to leave the city of Buffalo for more than two days without written permission from the chief probation officer, and the chief probation officer shall grant such permission for a period exceeding two days only when it seems consistent with the purposes of probation and important for the welfare of the probationer or for other valid reasons, provided that the chief probation officer shall not permit any probationer to remove permanently from the city without the special consent of the judge. The chief probation officer shall preserve a record of all probationers permitted to leave the jurisdiction of the court, and if they are to remain away for more than one month he shall employ such means as seem most practicable to maintain supervision over them while outside of such jurisdiction. So far as practicable, he shall request the co-operation of probation officers in the jurisdictions to which such probationers remove.

Rule 10. Violations of Probationary Conditions; Absconders.—All alleged or apparent violations of the probationary conditions by any probationer shall

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be promptly investigated by the probation officer supervising the probationer. If the probation officer finds the violation to be serious, or if he has reason to believe that a probationer has absconded or otherwise disappeared, without permission, from probationary oversight or from the jurisdiction of the court, he shall forthwith report the facts to the chief probation officer.

Rule 11. Summons; Warrants; Arrests.—If it seems important to the chief probation officer to have a probationer, who has violated his probation, appear before the court or judge, and if the appearance of the probationer cannot be secured otherwise, the chief probation officer shall request the issuance of a summons or a warrant. If a probationer has absconded or otherwise disappeared from probationary oversight or from the jurisdiction of the court without permission, the chief probation officer, unless otherwise able to secure either the early return of such probationer or a satisfactory explanation of his action, shall request a warrant for his arrest.

The chief probation officer shall endeavor to have all such summons and warrants served as early as possible, and to assist in locating all probationers for whom such a process has been issued and whose whereabouts are unknown. He shall keep a record of all such summons and warrants, including the names of the police officer or other persons requested to serve them; and shall report in writing at least monthly to the judge concerning all probationers for whom a summons or warrant is outstanding. If the probationary period of any probationer for whom a summons or warrant has been issued, is about to expire before he has been brought before the court or judge, the chief probation officer shall inform the court or judge of the fact and may request that the probationary period be extended as provided in subdivision 4 of section 11-a of the Code of Criminal Procedure.

Rule 12. Discharge from Probation.—Each probation officer shall notify the chief probation officer two weeks before the probationary period of each probationer is to expire, and shall arrange with the chief probation officer to make a final report on the case to the judge, and to have the probationer brought before the judge for discharge or other disposition.

Rule 13. Adult Contributory Delinquency.—Whenever adults are placed under the oversight of a probation officer, as provided in subdivision 2 of section 494 of the Penal Law, the probation officer shall keep records of such cases and make reports thereof as provided for regular probation cases by Rule 14.

Rule 14. Court Records.—When a child or adult defendant is placed on probation, the judge shall sign a probation order which shall be filed with the court records of the case, and the judge or clerk shall enter on the docket the word—"Probation." In cases where the probationer is required, as one of the conditions of his probation, to pay a fine, restitution or reparation, the judge or clerk shall enter on the docket the words—"Probation—to pay a fine or (restitution or reparation to——), of \$———." In cases where an adult charged with contributing to the delinquency of a child is placed on probation, as provided in section 494 of the Penal Law, without conviction, the corresponding entry on the docket shall be—"Probation upon consent." The clerk shall keep two "Probation Books," one for cases of children and the other for cases of adults, and in the proper book shall enter, in chronological

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order, the names of, and other data concerning, all children or adult defendants, as the case may be, placed on probation. When any probationer finishes his probation, this fact together with the results of the probation shall also be entered in the proper "Probation Book."

Rule 15. Probation Records and Reports.—The chief probation officer shall establish and maintain the system of records and reports, and of indexing and filing the same, provided by the State Probation Commission. He shall keep a card index of all juvenile probationers and another of all adult probationers, together with records showing the probationers assigned to each probation officer, the dates on which all probationary periods expire, the probationers who are outside the jurisdiction of the court, those for whom summons or warrants have been issued, and other important facts. Each probation officer shall keep a written history of each of his probationers while on probation, and shall report at least monthly concerning each probation case, including violations of the probationary conditions, to the chief probation officer and to the judge who placed each such person on probation, such reports, so far as practicable, to be in writing and supplemented by oral explanations. Each probation officer shall also make such other reports as the chief probation officer shall direct. So far as practicable, all records and reports shall be typewritten.

Unless permission is granted by the judge or the chief probation officer, no index card or other records shall be removed from the probation office; provided, however, that any probation officer, upon notifying the chief probation officer in writing, may temporarily remove the records of any of his cases from the office whenever necessary in connection with the performance of his duties. The chief probation officer shall keep a list of all records removed from the office, and shall see that they are returned to their proper places. All records made or used by volunteer probation officers at their homes shall be delivered to the chief probation officer upon request or at the termination of each respective case. All records shall be guarded against indiscriminate inspection by persons not entitled to inspect them, and when not in use shall be kept locked. All reports of probation officers to the State Probation Commission shall be inspected by the chief probation officer before being sent to the Commission.

Rule 16. Payments; Receipts; Accounts; Cashier and Bookkeeper; Bonds—Any probation officer or other employee of the court, upon receiving a payment of restitution, reparation or an instalment fine from any probationer or any representative of any probationer, shall give the payee an official receipt for the payment. Whenever such a payment is received through the mail an official receipt shall be given or mailed to the probationer within twenty-four hours. All such payments if made to probation officers or other employees of the court shall be delivered to the chief probation officer as soon as possible. All such moneys when deposited in a bank shall be deposited in the name of the chief probation officer as trustee. Unless otherwise directed by the judge all disbursements in the form of restitution and reparation shall be made as early as possible within forty-eight hours, and shall be made by the chief probation officer and so far as practicable by check. All fines collected from probationers shall be delivered to the clerk of the court on the day of their collection, or, if this is impossible, within the next twenty-four hours. A receipt

PRISON LABOR LEGISLATION

for each disbursement, except those made by check, shall be kept in the probation office.

Whenever a probationer is permitted to make his payments directly to the beneficiary, he shall be required, unless otherwise directed by the chief probation officer, to receive receipts in duplicate from the beneficiary, and to deliver to the probation officer one such receipt for each such payment. The probation officer supervising such probationer shall endeavor to verify whether such payments have been made.

The chief probation officer shall keep a list of all probationers required to make payments, and shall keep accounts of all moneys received and disbursed, in the loose-leaf ledgers and cash books provided by the State Probation Commission. The chief probation officer shall make a monthly written report of all arrears to the judges requiring the probationers to make payments. The judge may require any probation officer who collects considerable amounts of money to give a bond.

The probation officers shall endeavor, so far as practicable, to have all payments by probationers paid from their own earnings. If any probation officer learns that the payments required of any probationer entail undue financial hardship upon him or those dependent upon him, the probation officer shall forthwith report the facts to the chief probation officer and the judge.

Rule 17. Publicity.—All probation officers shall avoid divulging any information concerning their investigations or probation work which will tend improperly to jeopardize the welfare of any child or adult defendant or probationer. No probation officer, except the chief probation officer, shall give any information or make any statements to newspaper representatives concerning defendants or probationers.

Rule 18. Miscellaneous.—No probation officer or representative of the probation office shall write to, or concerning, any probationer on a postal card. Whenever it is especially desirable to protect the reputation of any child or adult defendant or probationer, correspondence from the probation office shall be written on plain paper and be enclosed in an envelope which does not indicate that it is sent by a probation officer.

So far as is possible without interfering with their own work, the probation officers, when so directed by their chief probation officer, shall assist the probation officers of other jurisdictions in investigating and supervising cases for them.

Rule 19. Amendments.—Any of these rules may at any time be amended, repealed or temporarily suspended by the judge. A. W. T.

Prison Labor Legislation. "The legislatures for the year 1912, will soon adjourn, but it is still too early to completely review their work. A number of bills have passed, however, in the several states which are of great significance to prison reform.

"In Kentucky, the former board of prison commissioners has been legislated out of existence after a most bitter fight. For years the prison board by the control of the prison patronage is stated to have swayed the legislature. The platforms of both parties at the last election promised reform by the substitution of a new and bi-partisan board. Governor McCreary sent several

MOVEMENT FOR INDUSTRIAL FARM IN CALIFORNIA

Dr. Kriegsmann on the Brostal System.—By Dr. Jas. N. Hermann Kriegsmann in the *Bulletin de l'Union Internationale de Droit Penal.*, Vol. 18, Liv. 2, 1911, not only gives a thorough analysis of the English "Brosstal System," on the basis of official documents, but subjects that system to a careful criticism from the standpoint of German jurisprudence and prison science. The discussion is valuable for Americans because the Brostal ideas are essentially those which underlie our "reformatories," parole and juvenile courts. On the whole this German writer finds the system worthy of approval and not inconsistent with the fundamental principles of criminal law. He thinks that all delinquent children under 16 years of age should be treated as subjects of educative processes (*Fürsorgeerziehung*); that after the 16th year is reached a careful distinction should be made between three categories; those who are only superficially criminal and require nothing more than a sharp and short lesson; those who are practically incorrigible and vicious and should be placed under severe penalties; and the educable and reformable who are proper subjects for reformatory institutions.

With many other German writers he emphasizes the distinction between "general prevention" (deterrence) and "special prevention" (reformatory education). An American of the reformatory school would admit the necessity of specializing institutions and measures, and of avoiding associations which corrupt by classification and separation, but would certainly insist that in every institution the educational spirit and aim should, even in the severest punishment, never be forgotten.

The article shows a fair and intelligent mind, capable of appreciating and assimilating the lessons of experience, no matter who has taught them.

C. R. H.

Movement for Industrial Farm in California.—Captain William I. Day, of the California Prison Commission, is urging the establishment of an industrial farm for discharged men in California. He recently made the principal address at the meeting of the Grace Church Brotherhood in California on the subject, "The Solution of the Problem of the Prisoner." He hopes for the introduction of a reform bill in the next Legislature providing for an industrial farm. This would help both discharged and paroled men to get a new beginning in life with a chance to earn a decent living. Incidentally he thinks that through such means hitherto waste land might be utilized and the state might provide for the quarrying of stone, the manufacture of cement and brick and other building material for which the state at present pays high prices.

Captain Day thinks that a section of land, either forest, quarry or farm land, could be set aside, cleared and rendered useful. Here discharged men could find immediate employment, instead of being sent out, as now, with nothing but the clothes they stand in and \$5 in money between them and starvation.

"Strong, able-bodied men, bearing the stigma of ex-convicts," says Day, "find it hard to secure employment, where thousands of men without a prison record are unsuccessfully searching for work. There is little wonder that

"A TEMPORARY CHECK IN CHICAGO"

ringing appeals to the legislature, and as a result the old board was done away with, but the new board is still to be partisan in its makeup. At least, it is to be appointed by the governor without restriction, despite the desire of the governor to avoid this responsibility. The new board promises to be a new broom, and there is expectation on all sides that new conditions will prevail.

"Virginia has passed a bill providing for the extension of the convict labor system on roads, so as to include 600 convicts who are at present employed on a shoe contract at the state penitentiary. The convict road force, which has for some years been under the management of the secretary of the state board of charities, has now been developed into a state-wide organization. All able-bodied convicts will be placed on the roads, while the sick, aged, and women will be divided between the farm and penitentiary. As the legislatures have refused to pass the bill prohibiting the contracting of the convicts who remain at the prison, it leaves in the hands of the prison board the question of their employment. The value of this remnant to prison contractors will, it is said, not be sufficient to ensure the high price which the board will have to get for their labor and will make possible the introduction of the state use system for the people at the institution.

"Other legislatures have prison bills before them. In Maryland there is one bill calling for a commission to investigate the prisons, and another to establish the state use system. A bill to investigate has also been introduced in Rhode Island. There seems good likelihood that the investigating bills will pass."—From *The Review*, Vol. 2, No. 4, p. 14.

R. H. G.

"A Temporary Check in Chicago." *The Survey* (New York) of March 30th brings sad news which we cannot but notice. Something has happened in Chicago, something which is announced on the cover of *The Survey* as "The Undermining of the Chicago Juvenile Court." Mr. Witter, the chief Probation Officer of that court, to whom we have been accustomed to look as a leader and as an example in juvenile court probation work, has been dismissed from his post.

"We understand that party politics are here involved, and it is not our business to intervene in the party politics of other lands. But we may perhaps be permitted to lament the dismissal of a noted and highly trusted officer of one of the best juvenile courts of the world. And it is only a friendly duty to remind all citizens of Chicago that, in the matter of child rescue and enlightened co-operation for child welfare, theirs is a city set on a hill, to which lovers of progress round the globe look for example and the fruits of experience, and that what is done for the children of Cook County, Illinois, concerns us all, for it is done, either for good or for ill, for the children of the whole world.

"One thing that the recent crisis has produced is what is evidently a very valuable report by the "Hotchkiss Committee" on Juvenile Court Law and Jurisdiction. We feel convinced that this trouble will result in the better paving of the road of progress in child rescue."—From *The Penal Reform Monthly Record*, London, May, 1912.

R. H. G.

ABOLITION OF CAPITAL PUNISHMENT

men will sometimes commit other crimes, especially those who are not physically able to do manual labor.

"The industrial farm would offer to any man leaving prison, whether paroled or discharged, an opportunity to earn a living and provide a home until a suitable position is secured for him. Such a farm would be of great benefit to aged men, cripples and invalids who have not the support of friends, nor employment suitable to their strength and health provided for them on their discharge."

Captain Day says that worthy convicts can be transferred from the penitentiaries to this farm, where they may have more privileges and less restrictions than they had in prison, and here, under the supervision of the farm superintendent, they can be watched closely. These transfers may be governed by joint decision on the part of the warden and his leading assistants and the State Board of Prison Directors.

The discipline, combined with the opportunity, says Captain Day, will make good citizens. Misconduct on a man's part will mean a return to prison, while good conduct for a sufficient period will earn for him parole privileges. An allowance for faithful service will enable him to earn on the farm sufficient cash to supply his parole expenses and clothing, should he not possess the amount or secure it from his friends. Men thus securing parole privileges would be the ones most likely to be faithful, having been tested and their character proven.

R. H. G.

Punishment for Intention or Results.—An article in No. 2, *Schweizerische Zeitschrift für Strafrecht*, 24th year, by Dr. Frantz Exner, of Vienna, on punishment for intention or results, involves the whole question of negligence. Punishment for intent only would free the criminal by negligence. Punishment on the basis of results alone does not reach the real basis of guilt. The negligent man in a position of great responsibility is more dangerous to society than the person who deliberately takes a single life. The professor's difficulty, and that of most writers dealing with this subject, arises from the time-worn attempt to make the punishment fit the crime instead of the criminal.

PHILIP A. PARSONS, Syracuse University.

Abolition of Capital Punishment.—The Society for the Abolition of Capital Punishment, with headquarters at Margaret Chambers, 145 New Kent Road, S. E. London, has recently issued a leaflet setting forth its objects and appealing for members. The aims of the society, as stated in this leaflet, are to obtain:

1. A more rational treatment of crimes of murder by the immediate adoption of a gradation of such crimes as proposed by the Royal Commission of 1864.
2. The consequent exclusion of various forms of homicide from the category to which the Death Penalty is applied.
3. The ultimate complete abolition of capital punishment.
4. The acceptance of the principle of the curative treatment of homicidal prisoners.

The president of the society is Dr. Josiah Oldfield, M. A., D. C. L., and the honorary secretary is J. F. Tilly.

A. W. T.

SPECIAL INSTITUTIONS FOR INTEMPERATE CRIMINALS

Capital Punishment as a Deterrent to Crime.—The opinion of certain English judges regarding the effect of capital punishment may be noted from the following clipping from *Law Notes* for January:

"The best method of dealing with criminals convicted of murder was discussed at a recent conference held under the auspices of the Society for the Abolition of Capital Punishment. Letters were read from Mr. Justice Grantham and Mr. Justice Channell, each maintaining that capital punishment was a great deterrent to criminals. Mr. Justice Grantham wrote that he was convinced that if capital punishment were abolished in the country life would be less secure than it was now. Fear of it prevented a great number of bad criminals from committing murder to avoid detection, and he thought it the duty of society to protect the lives of innocent people rather than save the lives of murderers. Mr. Justice Channell expressed the opinion that the criminal classes in England had a great horror of death at the hands of justice, and that the fear of it was a very great deterrent. Some criminals, he added, were not generally capable of being influenced by any consideration of the consequences of their crime, and in such cases capital punishment was ineffectual as a deterrent, and might, therefore, be somewhat difficult to justify."

EDWIN R. KEEDEY, Chicago.

Special Institutions for Intemperate Criminals.—Dr. Legrain, Head Physician of the Asylum of Villa Evrard, is quoted as follows in *The Reflector*:

"For insane criminals, special institutions are gradually being organized. For habitual drunkards, similar institutions are needed. The question is asked whether those that have been in existence for the last ten years have been a success. Unfortunately, there are few documents from which to gather replies. The Inebriate Act of England, 1898, provided for two classes of intemperates: (1) those convicted of crime, directly or indirectly the result of drink; (2) the intemperate guilty of a certain number of misdemeanors attributable to intemperance. Three kinds of institutions are at the disposition of the law; two state asylums; certified reformatories, or private institutions ordinarily founded by religious orders which receive drunkards through the courts or by transference from the state asylums; three retreats, which receive those who desire treatment and those who have been guilty of misdemeanors and who sign a paper before the justice of the peace that they desire to be treated. Little is said in the reports of the results, but it is fair to conclude that the English law, which has made happy progress compared with most legislation, has farther to go before it will be perfect. After characterizing the laws of several Swiss cantons, and of the United States, Dr. Legrain concludes as follows: 1. From the short and limited experience of institutions for the prolonged detention of intemperate persons, it is that this method of treatment is useful and profitable. Permanent reform has followed in many cases. For the success of the cure there should be oversight to see that the subjects keep up the practice of abstinence, which is the essential agent in the treatment. 2. The treatment should be given as early as possible and the expense reduced to the lowest limit. It would seem that the best way is to leave this work to private initiative, aided by the govern-

SUSPENDED SENTENCE

ment, leaving to the government the incorrigible cases. 3. From examination of the practice of different countries as to the point at issue, to-wit, the intervention of the law in cases of evil doing through the influence of cerebral poisons, it would seem that the best results, and the least costly, are the laws which permit the prolonged detention, in spite of themselves, of habitual drinkers. 4. The method of Judge Pollard, of St. Louis, is to be highly approved. It has excited interest in Sweden and England, and has been adopted in some courts of Great Britain. This method consists in offering to delinquents who are intemperate, whom alcohol alone has led to commit their offenses, conditional liberation on condition of their taking the pledge of total abstinence. That may make some smile, but it is a serious matter when urged by a judge like Judge Pollard and some others. Thanks to their efforts, 95 per cent of such delinquents have been brought into the right way. We commend, also, the excellent prophylactic method in vogue in Germany, which intrusts to the municipalities themselves the oversight of institutions for keeping people from the use of alcohol, and looks after them when they have become addicted to its use, through the police, through asylums, abstinence societies, etc."

R. H. G.

Suspended Sentence.—Robert Jacobson, Advocate of the Supreme Court, Christiania, is quoted in the *Reflector* as follow:

"Suspended sentence was introduced into Norway in 1894. It applies for cases of fines or short sentences, sentences that would mean six months in the house of detention or three months of imprisonment. The court takes into consideration the nature and gravity of the crime, the circumstances under which it was committed, the age of the offender, his previous record, etc. If it is some time since the crime was committed it is ascertained whether the accused has made reparation, so far as possible, or showed penitence.

"If the person whose sentence was suspended commits crime within three years and is convicted and sentenced, the execution of the suspended sentence also goes into effect. If it was an intentional crime, or if the accused has some other sentence than imprisonment, the court will decide whether the first sentence may still be suspended.

"When sentence is suspended the judge will at the same time admonish the accused, and if he is under twenty-one will exhort him as he has opportunity. Conditional sentences are subject to appeal.

"One of the objects in adopting this method was to avoid the harm that comes from imprisonment for short periods, which are demoralizing. By a conditional sentence the criminal is spared the sojourn in prison, and if for three years he abstains from committing crime it becomes a powerful stimulant to keep in the right path. That is the side which is of the greatest interest.

"Norway has statistics to show the results of this method since it went into operation. From the tables we find that the half of those convicted between the ages of fourteen and eighteen (fourteen being the age of criminal responsibility) were conditionally sentenced. Of those above eighteen, 11.8 per cent were conditionally sentenced in 1907. The sentence was applied more frequently to women than to men.

"As to the effect of conditional sentences data can be given only of those pronounced from 1903 to 1905. During those years 1,152 persons were so

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sentenced. Out of that number four died, one was pardoned, twenty failed to make promised reparation and 201 were again under arrest and reconvicted. But a little over 80 per cent came out successfully during those three years. Some have fallen since then, but it is safe to say that among all who have been under the suspended sentence not more than 10 per cent have become recidivists. Though these statistics cover only a few years, and it is but five years since the law has been in force, they would seem to show that conditional condemnation is an efficacious method of preventing crime."

R. H. G.

Dr. Mittermaier on the Indeterminate Sentence.—The following is reprinted from *The Reflector* of Grove, N. D., December 9, 1911, where it appeared under the authorship of M. W. Mittermaier, professor in the University of Giessen, Germany: "All that can be needed today is to examine anew the indeterminate sentence to see if it can be made to harmonize with the fundamental principles of penal law; to show the experience already derived from the exercise of that sentence, and to learn the view of those who have made a profound study of this question. The commission having expressed itself in the first question, it only remains for me to give my opinion as an observer and critic. I could do it briefly by saying that I agree completely with the conclusions of Dr. Freudenthal in his work on the reform of German penal law, but it may be better to give my individual opinion. The practical execution of a sentence differs according to the way it is understood. He who sees in a sentence only reparation for the crime will trouble himself less with reformation of the convict and the protection of society, which must be considered in carrying out an indeterminate sentence. And if it is granted that that sentence may be applied to certain categories of delinquents and not to others, it must be asked if the end of punishment permits such a distinction. Now I say that the penalty should not be for reparation alone, but that the amendment of the criminal and the safety of society are to be considered, though reparation must be considered, of course. In juvenile crime the preference is always given to the idea of reformation rather than to that of reparation; and in all civilized countries the principles of reformation and of protection play as large a part as the principle of reparation. The amount of reparation must be measured by the act and the guilt of the offender. Today that measure is fixed by the judge before the execution of the penalty; but I say, as do many other penologists, that it is just as well to wait to fix that measure till the execution of the sentence. During the trial the judge cannot measure the guilt of the offender as accurately as it can be measured during the carrying out of the sentence. The personality of the criminal and the character of his crime are certainly better revealed in the course of months and years of observation than during a trial which lasts a few minutes or a few hours. I may add also that with an indeterminate sentence the conduct of the convict is not always an index for liberation. A man should not be set at liberty because his conduct in imprisonment is without reproach, but because he has given proof that he is not wholly bad. Those who are not familiar with the penal system know that a capable and vigilant prison officer very quickly reads the real character of a prisoner. And there are several officers who are observing the prisoner at the same time: the superintendent, the physician,

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the chaplain, the instructor, and others who know the daily life of the prisoner and are able to judge it with exactness. These institutions also offer to the prisoner the chance to show his real character. Consequently, if one wishes to learn the measure of reparation necessary to meet the crime, one certainly is not subject to so many errors by doing it in prison during the execution of the sentence as in the courtroom. It must be remembered, too, that the officers of prisons know their duties, and though they are not clothed with the powers of the judge, yet we may have confidence in them. Conditional liberation has already exercised a large influence in prison affairs. I believe that progress will lead us some day to employ the penalty itself, as much as possible, for the reformation of the prisoner and for public security, and that when it alone does not secure these ends other means will be found to secure them. Even now we are organizing our penitentiaries on that principle. We try reformation, and if that fails, then measures must be taken to deal with habitual, dangerous and incorrigible criminals that will conduce to the safety of society, as, for instance, longer sentences. Everyone knows that as a measure of prudence a dangerous criminal must be held a longer time than an ordinary prisoner. The indeterminate sentence allows that, and at the same time the very fact that he is under an indeterminate sentence may incite the prisoner to reform. Though in theory the indeterminate sentence might be applied to all offenses, yet in practice there must be restrictions. So long as we consider short-term sentences necessary we shall not give to them the character of an indeterminate sentence. There are thousands of cases in which by inflicting a penalty we wish to show not only the offender, but all the people, that the state will not tolerate such acts. In such cases we do not pay so much regard to the individuality of the offender as to the nature of the crime. The indeterminate sentence takes account of the personality of the criminal. When it is a question of studying the crime with the greatest care, of trying to reform the criminal, of securing public safety, and of having a sentence that shall show the gravity of the case, then the indeterminate sentence is indicated. That rule applies to adolescents up to the age of 25, or to recidivists in serious cases, but not in those of less importance. It is already practically realized in those cases, or looked forward to, in the United States, England, Australia, Norway, Sweden, Switzerland and Austria. Even where reform methods take the place of penalties, the character of the indeterminate period of detention prevails. For practical reasons an indeterminate sentence must be considered indispensable for the two classes mentioned, while for others it may be desirable, though not necessary. They are the cases where we have rather reparation in mind than the reform of the criminal, and where we are looking for public safety. Personally I am convinced that as a rule, with a counterfeiter, a fraudulent bankrupt, a murderer who acts under passion, a political criminal, the possibility of moral reformation is an illusion, and that even a prolonged confinement would not bring it about. In those cases we may dispense with the indeterminate sentence. The opportunity to secure conditional liberation would be sufficient for such cases. It may be objected that it is not rational to apply the indeterminate sentence to one category of offenses and not to others. That objection is not justified. How many courts now pronounce different penalties for different crimes? It

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is not fair to say that the establishment of the indeterminate sentence would interfere with the necessary balance of penalties. Anyone who says that shows that he is ignorant of the modern principle of the individualization of penalty. One would not give the same penalty to a beggar, a counterfeiter, a political offender, but the principle of the indeterminate sentence would be the same for all. The objectors fear that the rights of the prisoner will not be sufficiently guarded. I cannot share their fears. For determinate sentences that guaranty resides in the attitude of the judge. But here the influence of the penitentiary administration is considerable, and, in fact, it is from that that emanates the true significance of the sentence. Yet no one fears that the personal liberty of the prisoner is not sufficiently safeguarded by the penitentiary administration. I should have perfect confidence in the penal authorities to carry out the law, but it might be possible to strengthen the guaranty. At first there might be a minimum and a maximum. The officials would then be limited. Then there is a guaranty in the fact that the physician, the chaplain and others are associated with the superintendent, and with good officers there would be little danger to the liberty of the prisoner. Promotion from grade to grade employment at various industries, all these help to influence the prisoner. It would be imprudent to leave the fate of the prisoner to one officer alone. The best guaranty of the just treatment of the prisoner is the combined decisions of several officers who are working toward a common end. Such officials can tell whether a prisoner is a hypocrite or not. The idea of theorists who imagine that every prison director is deceived is as absurd as the ideas of the people who pretend to be sick. Finally the authority established to decide on liberation furnishes a new and important guaranty. Details are unimportant, but the principle is practical, as may be seen from the results in the United States. Thus, I see no real obstacle to the introduction of the indeterminate sentence. Some other suggestions as to sentences have been made. Let them be tried. They are only advance couriers of the indeterminate sentence. A definite sentence, followed by 'preventive imprisonment,' would be practically of the same effect as the indeterminate sentence. In both cases the individuality of the prisoner would have to be taken into account. Therefore, I conclude that the indeterminate sentence is the best form of prolonged imprisonment for delinquent adolescents up to the age of 25, who are susceptible of reformation, and for incorrigibles and recidivists of every kind. It is not opposed to the principles of penal law, and it is in harmony with the protection of personal liberty. For dangerous criminals there can be preventive imprisonment succeeding a definite sentence." R. H. G.

STATISTICS.

Italian Crime According to the Most Recent Penal and Prison Statistics.—Professor Filippo Virgili, Professor of Statistics at the Royal University of Siena, contributes to the October and the November issues of the *Scuola Positiva*, an illuminating article on "Italian Crime, According to the Most Recent Penal and Prison Statistics." The figures were compiled by the Department of Statistics of the Government of Italy under the direction of several enthusiastic statisticians and sociologists, among whom was the genius Doria. Blanks were issued to magistrates, to judges of the higher courts,

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and to penal and reformatory institutions. It might go without saying that the figures got in this way are not exact. Public officials, the author of the article says, do not take investigations of this sort seriously. The statistics compiled now are, however, tolerably satisfactory. We may get from them many interesting and instructive facts, and derive from them most valuable suggestions and conclusions.

Angelo Messedaglia said, in 1865, "that criminal statistics furnish the strongest, if not the only certain symptoms of the civil morality of a nation. We may know things only by contrast. We may discern order only by seeing disorder. The beating of the heart is not noticed except when it is abnormal. Death is the measure of life. So morality is delimited and measured only by immorality; respect for law defined and measured only by infractions of law. In criminal statistics we have both the qualitative and the quantitative elements, and thus we have the true material of statistics, satisfying the demands of science." And did not Lord Brougham say to the statistical Congress held in London in 1860, that "criminal statistics are to the legislator what the chart, the compass and the plummet are to the navigator?"

Professor Virgili divides his analysis of the voluminous statistics and his discussion of them into the following heads: (1) Objective Statistics, (2) Subjective Statistics, (3) The Geography of Crime, (4) Statistics of Prisons, and (5) Statistics of Reformatories.

Objective Criminality.—Under the first head he gives a table showing crimes committed each year from 1879 to 1899, inclusive. From this table we gather that there has been a gradual diminution of the number of crimes, the decrease in every 100,000 of inhabitants being from 960 to 892. From the second table taking in crimes committed in the years 1890 to 1905, inclusive, we learn that crime gradually increases from 1890 to 1898, the year of very grave political disorder in Italy, from the proportion of 100 to 137. In the period 1898 to 1901 there is a regular decrease from year to year. Then there is again a rise in 1902, which continues in 1903, when the number of crimes reaches that of 1898, "the fatal year." The number, however, drops down to 132 in 1904, and stops at 133 in 1905. The number of felonies during these years, 1890 to 1905, is greater than the number of misdemeanors, but the rate of rise is greater in the case of misdemeanors than in that of felonies. In 1890 the number of felonies was 391,623, in 1898 it was 527,383, in 1905 it was 500,687. In the same years the numbers were respectively for misdemeanors, 218,250, 312,123 and 310,810. The rate of increase was in the case of felonies from 100 in 1890 to 134 in 1898, and 127 in 1905. And in the case of misdemeanors it was 100 in 1890, 143 in 1898, and 142 in 1905.

The following table is so valuable that I give it just as the author has presented it:

	Number of Crimes Reported (per 100,000).		
	1890.	1898.	1905.
Violences, resistances to authority and acts preventing authorities from doing their duty.....	37.95	54.37	47.28
Crimes against public justice and public officers.....	45.53	38.50	40.12
Crimes against good morals.....	16.50	23.66	23.19

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Murder and manslaughter.....	12.04	11.78	8.51
Personal injuries (voluntary, i. e., with criminal intent) .	244.50	278.45	273.24
Libel and slander.....	201.91	268.15	221.69
Robbery, extortion and threats.....	7.93	12.06	12.34
Thefts	361.85	433.53	402.30
Frauds and cheats.....	53.55	75.49	65.86
Other felonies provided for in the Penal Code.....	301.05	429.96	372.89
Misdemeanors	740.50	1012.17	956.65

As the table shows, the gravest of crimes, murder, has shrunk from 12.04 to 11 during 1890 to 1898, and from 11.78 to 8.51 during 1898 to 1905, shrunk to a third of its former self. "This," says Professor Virgilii, "is the only comfort this prospect can give us. It ought to follow that personal violences, assaults and batteries, since they are complementary crimes to murder, decreased too, but they grow from 244 in 1890 to 278 in 1898, and drop only to 273 in 1905. Crimes against property have all enhanced. So it is also with crimes against good morals and manners and the order of the home. These crimes cannot but trouble us seriously."

Subjective Criminology.—Under this head are discussed the personal qualities of the criminals—sex, age and condition of life. There were in the period running from 1891 to 1895 among every 100,000 inhabitants 1,109 males and 229 females; a proportion of 82.8 for males and 17.2 for females; in 1896 to 1900 there were 1,165.9 males and 247.6 females; a proportion of 82.1 for males to 17.9 for females; in 1900 to 1907, 897.4 males and 206.9 females; a proportion of 80.9 for males to 19.1 for females. Crimes committed by males are quadruple those committed by females. But from 1891 to 1907 we may see a light decrease in crimes of males and a corresponding increase in crimes perpetrated by females.

The most crimes are committed by persons between the ages of 21 and 30—28 per cent of all crimes. A high percentage is kept up between the ages of 30 and 40. After this latter period the percentage becomes smaller and smaller. There is a terribly high proportion of crime between the ages of 18 and 21. Juvenile crime—that is, crime committed by persons below the age of 21—is not only very high, but grows constantly. There were in every 100 criminals during 1891-1895, 23 per cent of juveniles, during 1896-1900, 23.6 per cent, and during 1906-1907 the flood rose to 26.4 per cent. Professor Virgilii urges the necessity of immediate thought and action in regard to the treatment of the young. He holds up to emulation the admirable example of the United States and of England in which a concrete program of prison reform, and educational improvement in reformatories is being intelligently and perseveringly developed and put into effective operation. In regard to the nature of crimes committed by juveniles, it may be said that children under fourteen perpetrate, for the most part, crimes against property, that children from 14 to 18 years of age indulge in frauds and begin to exhibit the sad tendency to crimes of passion. This tendency becomes accented from the ages of 18 to 21. From 21 to 25 the crimes committed are assaults and batteries, frauds, disobedience and violence to the authorities; from 25 to 30 besides the previously mentioned crimes, forgery. From 30 to 40 in addition to the crimes already named, crimes against public administration become manifest. From 40 to 60 the same crimes hold

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sway. From 60 on, private violences, personal injuries, frauds and crimes against public administration.

In respect to the civil condition of criminals, it may be said in general that celibates contribute most to the stream of crime. In 1891-1895 the proportion was 50.4 for celibates, 43.8 for married people, and 3.8 for widows and widowers. In 1896-1900 it was 50.7, 43.7 and 3.9 respectively. In 1906-1907 it rose to 53.9 for the first, sank to 41.4 for the second and lightened one-tenth for the third.

In respect to the occupations of criminals, it may be noted that over one-half of the crimes are committed by agriculturists. And the number remains constant during the three periods above mentioned. One-fifth are committed by persons in the industries, in the arts and in the trades. Commerce, which, in the decade 1891-1900, furnished one-eighth of all the criminals, now does not furnish more than a tenth. House servants contributed during 1891-1900 1½ per cent to the number of crimes, but now they contribute 3¼ per cent. Professional men, capitalists, and persons employed otherwise than as already mentioned, have maintained a steady percentage of a little over three.

It is interesting to know that every group of delinquents has a specific crime or crimes characteristic of it. So, we find that the agricultural classes are addicted to frauds and light personal assaults; the industrial classes given over to the same crimes, but the number of them is in inverse order to the former; the commercial classes are addicted to bankruptcy, frauds, bribery and other crimes against public officials; household servants to fraud and violence; other employes and capitalists to crimes against public administration.

The Geography of Crime.—One of the most valuable parts of the article under summary is that part which deals with the distribution of crime. For the second time I must ask leave to present a table from Professor Virgili. There are so many vague notions floating about concerning crime in different localities of Italy that it is a duty one owes to truth to give the following table, word for word, and number for number. The reader will find in this table the per capita wealth of the population, and he may, or may not, discover some connection between material condition and crime.

		Per Capita Wealth (1903) in Lires.	Convicted Every 100,000 Inhabitants (the average for 1903-1905). For For Mis-	
Provinces.			Felonies.	demeanors.
Northern Italy.....	{ Piedmont	3,179	27.6	30.4
	{ Liguria	3,716	42.2	88.5
	{ Lombardy	2,520	32.4	38.0
	{ Venetia	1,593	33.7	40.9
	{ Average	2,749	36	49.4
Central Italy.....	{ Emilia and Romagna.....	1,765	31.3	51.2
	{ Umbria and The Marches.....	1,244	46.6	32.8
	{ Tuscany	1,817	33.2	88.6
	{ Lazio (Rome)	3,174	105.8	458.1
	{ Average	2,000	54.2	157.7

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Southern Italy.....	Campania, Abruzzi and Molise..	1,583	104.1	67.8
	Basilicata	1,406	107.3	30.3
	Apulia	1,712	98.6	31.6
	Calabria	1,186	98.4	32.6
	Average	1,498	102.1	40.6
	Sicily	1,604	73.3	33.4
	Sardinia	856	103.6	62.8

Comparing the first two columns, we see that as the per capita wealth decreases, the number of crimes increases; and that the increase in the number of crimes is in proportion greater than the decrease in wealth. This comes from comparing the averages of the different grand divisions of Italy. But a more detailed study of the figures for each Province, and a comparison of Province with Province show discrepancies which are worthy of our attention. Piedmont and Lazio have the same wealth, but the crimes of the latter are four times as many as of the former. Emilia and Apulia have nearly the same wealth, but the crimes of the latter are more than three times as many as they are of the former. Liguria is much richer than Venetia, but instead of having less crime it has more. Misdemeanors are more numerous in Lazio and relatively scarce in Southern and Northern Italy.

Do the figures militate against the economic interpretation of crime, let alone the economic interpretation of history?

"There is no doubt," says the author, "that poverty eats up the organism, deteriorates the mind, and produces evil consequences which permeate social life. Of this scientific proof has been adduced by Pagliani, by Claude Bernard, by Richet and by Albertoni. Our school, the criminal anthropological, has been unjustly accused of ignoring economic conditions, and of having the preconceived idea of the born criminal. But the accusation is unjust. Enrico Ferri, before he limned the new prospects of the young school, took a dive into statistics, studied French crime from 1826 to 1876, and related it to the economic environment. Soon afterwards he established the law of the maximum level of crime, which maximum varies with the environment both physical and social. Vergilio Rossi and Fornasari di Vercè followed in the same strain. Indeed, the last comes to the conclusion that poverty always acts as the principal cause in crime." This latter seems to Professor Virgilii an extreme view. He believes the statistics he is examining do not bear it out. "Moral phenomena are not explicable by reference to one cause. They are produced by a variety of concomitantly acting causes. Some of these causes are the state and degree of education, and of culture, the climate, the seasons, the religious sentiment, alcoholism, etc."

At this point the author quotes from Francesco Coletti, General Secretary of the Parliamentary Commission for the Study of the Condition of the Peasants in Southern Italy and in Sicily, to the following effect: "In respect to the intensity of crime Italy may be divided into three zones: The first, beginning at Piedmont and extending down to Emilia, is the least black; the second, running from Tuscany to Lazio, is of medium darkness, the third, from Abruzzi to Calabria and the Great Isles, is the blackest." . . . "Each region, each Province, as is true also of each social class which is distinct in character, has, in general, its own peculiar crimes. In Abruzzi the peculiar crime is theft; in Calabria the endemic crimes are violences against the person,

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carnal offenses, robbery; in Sicily extortion and kidnapping; in Sardinia larceny and robbery of animals, unlawful pasture, and robbery from the person. Aquila is noted for its thefts; Girgenti and Trapani for homicides, Catania for its adulteries. There are regions, moreover, in which all the principal and most characteristic social classes give relatively a high quota of criminals; there are others in which the difference of the contribution of the several classes is very marked. Sardinia is among the former regions; Liguria, and some other Provinces, especially in the north of Italy, among the latter. Juvenile crime, in respect to population, is greater in Southern Italy, in the Islands, and also in Central Italy than it is in Northern Italy. Recidivists are more numerous in the South of Italy and in the Islands than they are in the two more northern zones. The highest quota is given by Abruzzi, Molise, Sardinia, Lazio and Calabria." R. F.

Prison and Reformatory Statistics in Italy.—The following is from Professor Virgili's article in *Scuola Positiva* for November-December, 1911: "The prison and reformatory statistics for 1908 and 1909 are in four volumes, which are of uncommon accuracy in our official publications. For them Alessandro Doria is responsible. They are complementary to and control the figures and facts derived from our study of the judicial statistics. It is a duty to recognize the fact that the activity and the intelligence of one man, Signor Doria, has supplied the economic deficiencies and met the bureaucratic obstacles which have presented themselves. He has achieved miraculous results. To him are due the abolition of the chain and ball, the lightening of disciplinary punishments, the use of the labor of prisoners in work beneficial to their improvement, the separation of the administration of reformatories from prisons, the reduction of the number of penitentiaries, the gradual improvement of buildings; the institution of a sanatorium for the criminal tubercular; the opening of a school for the education of the keepers in the proper methods of treatment of prisoners; the preparation of prison rules and regulations to substitute those now in existence, which are antiquated and not in harmony with the exigencies of progress."

To houses of detention, which exist in the more important cities, there were brought daily an average of 305 in 1908. But 1909 shows a decrease with a daily average of 271. Doria comments: "Not only does the number of convicted persons drop, but also the number of those charged with crime. The former fact might mean a partial decrease of crime, but the latter fact, even though not all guilty persons are arrested, ought to point to a marked diminution of the number of crimes."

Reformatories have now been effectually separated since 1904. The treatment and the education of the young criminal must be different from the treatment and the education of the hardened criminal. In these first few experimental years the following benefits have been conferred: the immediate and complete adaptation of the youngsters to the new personnel; the organization of the procedure according to the new regulations; the notable diminution of friction between inmate and inmate, and between inmate and keeper; the progressive development of the education of the reformatory occupants; the awakening of the sense of emulation on the part of private institutions in the

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exercise of correctional functions. The number of government reformatories is, however, notably smaller than that of private reformatories. There were in the whole of Italy 11 of the former, and of the latter 35. The population of all these institutions was distributed as follows: In government reformatories there were 1,600 males and 106 females, and in private reformatories 1,984 males and 1,976 females, the grand total being 5,666.

The regions of Italy that furnish the greatest number of juvenile delinquents are Sicily, Campania, Lombardy, Lazio (Rome), Venetia, Piedmont. The regions that furnish the smallest number are Sardinia, Umbria and Basilicata. In every 100 males in reformatories 80 come from cities and 20 from rural districts; in every 100 females, the proportion is 78 to 22. In respect to civil condition, there are in every 100 males 89 illegitimate children, seven legitimate ones and four foundlings. In respect to special conditions of the family there are in every 100 males 44 whose parents are both living, 27 whose fathers are dead, 19 whose mothers are dead, and 10 who are orphans; and in every 100 females, 45 whose parents are both living, 24 whose fathers are dead, 22 whose mothers are dead, and nine who are orphans. Looking at the economic condition of the family, we derive these figures: In every 100 delinquents there were 90 whose parents had a trade or business, 5 whose parents were unknown or had disappeared, 4 whose parents were beggars or vagabonds, and only one who was the son of an owner of land. Looking at the health of the delinquents, we get these facts: Among males 84 were in good health, 13 were in mediocre health and 3 were in bad health; among females 64 were in good health, 28 in mediocre health and eight in bad health. These figures seem to indicate that the healthier the child the more probable the commission by it of acts criminal or against discipline. From the point of view of education, it may be said that 41 males in every hundred had no education, 40 but little, and 19 sufficient education; and that in every 100 females 44 were without education, 47 were with little of it and nine had enough.

"These conclusions seem interesting in that they point to the causes of this grievous sore of our social life—juvenile crime. When we have discovered the root of the evil the cure will be easier."

R. F.

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LA DELINQUENZA IN SICILIA nelle sue forme piu gravi o specifiche: a paper prepared for the Congresso Nazionale contro la Delinquenza e l'Analfabetismo—held at Girgenti, 21-25 May, 1911. By *Tomasso Mercadante Carrara*. Palermo, Stabilimento Tipografico "Optimo," 1911. Pp. 145, inclusive of appendices.

For the study of criminality in its historical factors, Sicily is an especially fruitful subject of examination. Its colonization first by the Phœnicians, its later and more permanent settlement by the Greeks, its subsequent domination in turn by Romans, Vandals, Goths, Byzantines, Saracens, Normans, Spaniards, its occupation in more modern times by French and English, to say nothing of the migrations thither of Lombards and Jews during the Middle Ages—have produced an almost unparalleled fusion of racial strains. What wonder if this ethnic crucible still exhibits a tendency to boil over!

In what he invites his public to consider not as a finished work but as a hastily prepared note, Sig. Carrara, a member of the Sicilian judiciary, gives us an admirable discussion of the principal criminal problems of the island from the historical standpoint, with especial reference however to the recorded penal legislation which begins in the Norman epoch. The sources of Sicily's troubles he finds in the long centuries of spoliation and oppression which have retarded the normal development of agricultural pursuits, and in the abuses of the feudal system which have been determining causes of poverty and ignorance. To oppression and misrule he attributes the origin of the Mafia. The spirit underlying this organization, he epigrammatically observes, is in reality the hypertrophy of self-respect. It is the spirit which impelled men to unite for the protection of their rights when social justice was lacking, but which outlasting the conditions which gave it birth, has become perverted to the support of a criminal confederacy. We in this country will the more readily admit the force of this argument remembering the somewhat analogous history of the Ku Klux Klan.

Within recent years our larger American cities have become unpleasantly acquainted with the typical Sicilian crime of kidnaping for ransom ("ricatto") which indeed has been the direct cause of some additions to our statute books. We would have been glad of a word of sympathy from Sig. Carrara on this score. But the spectacle of the immigrant criminal returning from America educated in the use of high explosives—a thus much more formidable species of "ricattore" than when he left his native shores—is the thing which particularly impresses the author in the present regard. In Sicily during the five-year period 1906-1910 there were 45 convictions for this offense. While these figures show a slight decrease over those of forty years ago, the author pessimistically but justly thinks that the diminution is only apparent in view of the transplantation of the crime in America. From the legislative records we learn that the offense of "ricatto" first made its appearance in the 16th century. A pragmatic of the Viceroy Mario Antonio Colonna, published in 1578, recites

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that within the past few years lawless persons had introduced "a wicked and tyrannous practice so cruel and inhuman * * * that, not content with the crimes of robbery and theft which they commit, they seize and capture the vassals of this loyal realm to the end of holding them for composition and causing them to be ransomed on the captors' terms by the delivery of money or goods belonging to such vassals or to their relations and friends, or in default thereof putting such vassals cruelly to death, to the serious prejudice and damage of justice and of the vassals of His Majesty." By this enactment offenders were likened to rebels against the sovereign and subjected to the severe penalties prescribed for rebellion. In this connection the author takes occasion to criticise the punishment provided by the Italian Penal Code for the offense in question. To treat "ricatto" on the same basis as robbery he considers wholly wrong—a view with which most of his American readers will be disposed to agree.

But the besetting crime of Sicily is cattle stealing ("abigeato," comprised under the Penal Code categories of "rapina di bestiame," and "furti qualificati di bestiame"). The protection of the ownership of live stock is the subject of numerous decrees and ordinances in the recorded legislation. We are furnished by the author with some curious history regarding the regulation of cattle branding. It is interesting to note that from the 12th century there prevailed in Palermo a "jus merci"—a law of brands, whose handsomely expressed object was "Ut omnis via delinquendi claudatur malefactoribus universis et Panhormitani Cives in cultu pacis et justicie salubriter gubernentur." Under this law there was elected annually one or two Brand Masters ("Magistri Merci"), entrusted with the custody of the city brands which they were to affix to hides after being satisfied of their ownership and among other duties charged with that of seeing that animals sold for slaughter were the property of the sellers. Centuries of legislation, however, have accomplished but little in effectively safeguarding the cattle proprietor in Sicily. During the five years before mentioned, 1906-1910, there appears a total of 3086 convictions for cattle stealing with and without violence, each year showing an increase over the preceding. This offense the author regards as of vital danger to the public welfare. It constitutes the thread which unites the criminals of the various communes, since there exists an organized traffic in transporting stolen cattle from one commune to another or out of the island so that they may be sold without detection—a traffic which is one of the principal industries of the Mafia. In short, the statistics of cattle stealing are an index to the criminality of the island.

For the amelioration of existing conditions the author makes a number of earnest recommendations: a change in the election laws, since those in force enable the leaders of the Mafia to control the voters of their districts; more intensive methods of agriculture; an increase in the severity of the minimum penalty for cattle stealing; more stringent penal provisions against those guilty of harboring or sheltering cattle thieves or receiving stolen cattle; a return under proper regulations to the method of issuing certificates of ownership ("bollette di possesso") of cattle as in use prior to 1896; and the improvement of the police service in the rural districts.

Sig. Carrara's candid and forceful presentation of the causes of crime in Sicily ought to do much toward bringing about a better state of affairs. The

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rich collection of legislative documents contained in an appendix renders the monograph of permanent value to the literature of historical criminology.

Chicago.

ROBERT W. MILLAR.

THE INEFFECTIVE ATTEMPT (*Der Untaugliche Versuch*). Von *Ernst Delaquis*. J. Guttentag, Berlin, 1911. Pp. 344.

The third volume (new series) of the transactions of the College or Seminary for the study of criminal law of the University of Berlin, is a contribution by Ernst Delaquis to the reform of Penal Law. The entire book is devoted to a very detailed discussion of the penalty which should be imposed on those who make an ineffective attempt to commit crimes—(German—"Der Untaugliche Versuch." French—"Delit Manque.")

The volume contains 333 octavo pages of text and notes, exclusive of a lengthy index of contents and list of the Bibliography. It is remarkable only for the very minute investigation of the legislation, jurisprudence, etc., relating to the particular subject, and it is doubtful whether any useful purpose has been served by the author's apparently very considerable labors.

The penal codes and writers on criminal law of Germany, France, Italy, Switzerland, etc., are carefully and laboriously examined, and the views of the various writers and the legislation compared and discussed; but however admirable ordinarily German thoroughness may be, in the instant case, it seems to be somewhat like the labors of the erudite entomologist, who was content to devote all his learning and attention to the study of the knee of the left hind leg of a particular species of bug.

The first part of the book is devoted to a consideration of the material relating to the subject, which was contained in various projects for a Penal Code for Switzerland. This is considered under the heads:

1. Definition of attempt; determination of the guilt and liability of punishment (*Strafbarkeit*) of preparations made in advance.
2. The abortive (*fehlgeschlagne*) crime.
3. Withdrawing from the attempt.
4. The ineffective attempt.

In a general sort of way the entire investigation proceeds with the consideration of the subject along these divisions. It is examined historically and philosophically. The various provisions of law relating to the subject are compared and discussed. What law writers have written, and the controversies which have existed, and yet exist between those who treat the subject objectively or subjectively, theoretically or as practically applied, whether the penalty for such attempts should be as great as for the actual commission or whether it should be less, whether it should be fixed or something left to the discretion of the court, all is discussed with a fulness and precision worthy of a more considerable subject.

That the book will be read by laymen, or even lawyers, is highly improbable; whether it is of sufficient value to even the student to justify the labors of the author is also doubtful. Even a rather superficial reading of the book is tiresome and not profitable. All that can be said for it, is that it exhibits great industry and patient research.

New Orleans.

SOLOMON WOLFF.

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THE REFORM OF LEGAL PROCEDURE. By *Moorfield Storey*. Yale University Press, 1911. Pp. 263. Price, \$1.35.

Among the long list of publications that have appeared within a short period dealing with the alleged shortcomings of our legal system, Mr. Storey's little book deserves to rank high, not only on account of the author's eminence at the bar, but because of the suggestions he makes looking to reforms. First of all, he recognizes as a necessary prerequisite to the proper working of any system, however admirably formulated, the existence of an able and enlightened bench and bar, as well as a wholesome public attitude toward the law. The problem is how to maintain a sound legal system for an essentially lawless people.

Much of the delay in trials and appeals in the author's opinion is due to incompetent lawyers and to the legislation which has stripped judges of the powers that were theirs at common law and that are so essential to speedy and just results in litigation. As a remedy, the judicial position, in tenure, and pay should be made attractive enough to command the leaders of the bar, and the common law authority of the court over the cause should be restored. The popularity of the latest panacea—the recall—shows the tendency is away from this suggestion, however.

Passing to more specific measures, a number are suggested, some of which are considerably in advance of responsible political thought. To cut down litigation, much of which has to do with personal injury suits of one kind or another, he advocates workmen's compensation, old age pensions, and insurance of passengers by transportation companies. In criminal matters, simplicity in indictments, and abolition of the right against self-incrimination is advocated.

The author disagrees with ex-President Roosevelt in his statement that "no people have permanently amounted to anything whose only public leaders were clerks, politicians and lawyers," suggesting in lieu thereof, "no people have ever permanently amounted to anything among whose leaders great lawyers were not conspicuous, and among whom respect for the law was not a controlling force."

University of Wisconsin.

H. S. RICHARDS.

I REATI DI FALSO NEL DIRITTO GERMANICO. By *Marcello Finzi*. Emilio Pacini, Pisa, 1911. Pp. 42.

Marcello Finzi, Professor of Criminal Law and Procedure in the University of Ferrara, has written a most interesting article on the crime of falsification in early Teutonic law, dealing with counterfeiting and forgery. He confesses that his subject is but little known, but claims that this branch of the law of the Visigoths and Ostrogoths, which has so influenced the history of Italian law, is worthy of study. For example, Longobardian law was the law of Naples until the Aragon Dynasty mounted the throne. Finzi compares the laws of all the "Barbarians," the Scandinavian, Icelandic and Norwegian. He cites the Sagas as throwing much light upon the early laws.

His essay is divided into counterfeiting, falsification of official documents and other crimes of falsification. Under all three headings he gives examples of the different crimes and their penalties. These are of great interest to the student of history and comparative law, but do not lend themselves to repetition in a short review. But, under the first heading, it is interesting to note that

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under the Burgundian law, a vendor, who refused to accept payment in genuine, lost all right to claim the price of the object sold ("quod vendere volebat non accepto pretio perdat"). It is difficult to see by what process of thought this conclusion was reached, although under present-day law, *tender* may be a defense to a suit *in assumpsit*. Similarly, to dispute the validity of a valid official document was punishable with death ("non aliunde nisi de vita componat"). It would seem to a modron that the penalties for mistakenly bringing an accusation of this kind or for questioning anyone's tender would have had an appreciably non-litigious influence. In both counterfeiting and falsifying official documents, there were no accessories; everyone implicated was a principal. This seems to be a foreshadowing of the ultra-modern tendency to abolish technical distinctions; but it is to be feared, that it did not arise from a desire for clemency and the avoidance of legal traps. In one respect, however, the ancient barbarians solved a question that has puzzled modern jurists—the question of attempt. Their solution cut the knot by not recognizing the crime except objectively. The logical contradiction between the failure to punish the unsuccessful attempt and their recognition of absence of "*scienter*" as a defense did not trouble them.

Among the other acts of falsity, which Finzi cites, is the claim of a false name, parentage, or quality. To pass oneself off as a woman was a crime, for a woman to have dressed as a man at any time during or before coverture, was sufficient grounds for divorce. Sex Visigothorum, vii, 5, 6, shows why our author could not be more definite in the title to the third part of "I Reati di Falso nel Diritto Germanico;" "*Qui aliquam imposturam fecerit . . . reus falsitatis habeatur.*" This clause includes the refusal to return a loan, though the borrower borrowed in good faith, delay in payment of debts, sale of adulterated goods and violation of contract. The alteration of boundary marks was punishable with death. In fact, neither branches nor leaves of boundary trees could be touched.

The conclusion which Finzi reaches from the comparison and study of his many examples and deep research is that the few statutes in fraud and deceit are found in Barbarian laws, and that those few are so similar in rationale and in places even in phraseology that they are simply copies from the latter. The ultimate fact of historical value is that the branch of law dealing with falsification is of Roman origin and is not imported in the mass of northern law which went into Italy with the northern hordes. They were not concerned with falsification. Their criminal law dealing with personalty shows that their juristic feeling was strong where their concrete interest lay, "showing again that truth, felt by all and so brilliantly illustrated by sharing that penal laws are the measure of value the current price, as it were, of social advantages."

Philadelphia.

JOHN LISLE.

REPORT OF THE VICE COMMISSION OF MINNEAPOLIS, TO HIS HONOR, JAMES C. HAYNES, MAYOR. Minneapolis, 1911. Pp. 134.

The attention of all those who are perplexed to know what attitude the American city should take towards sexual vice should be called to this most excellent little report. In no regard have our American cities been less successful and on no subject, perhaps, has there been so

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much tacit consent that actual law should be either entirely ignored or enforced at the will of the police officials. That such connivance with law breaking must lead to most corrupt connection between evil-doers and the guardians of the law has everywhere been clear. Yet, despite the recognition of this there has been no inclination to attempt anything else.

The commission was appointed last year as a result of a general public discussion as to the city attitude towards houses of prostitution in one of the city wards. In this report we find, first, a statement of the state laws and city ordinances, then a historical sketch of the development of the Minneapolis policy. This is followed by a general discussion of the question of legalizing prostitution, with a review of the experience of Europe and other cities in this country, followed by a description of the present situation in Minneapolis and of the present method of enforcement of laws. The closing chapter contains recommendations of the commission. It is interesting to note that the conclusions reached are, in the case of the majority of the members of this commission, "entirely different from those with which we started." "The outcome is that we are a unit in the policy that we recommend."

The first recommendation is that law enforcement (that is, the suppression of prostitution) "ought to be a permanent administrative policy of our city government." If necessary, this should lead to an increase in the police force and severe penalties, probably imprisonment, for those who deliberately violate the law. To bring this about, citizens should actively co-operate with the police. To eliminate as far as possible the use of lodging houses for immoral purposes, licenses should be issued and very careful rules should be established for the guidance of the hotel keepers. In the interest of public health and safety, it is recommended that the physicians of the city should deliberate and see what can be done to eliminate the quacks who at the present time have so much of a monopoly of the treatment of venereal disease, and that some measures be advised regulating the advertisements of supposed cures for these diseases.

The measures of prevention recommended fall under several main heads. First, education; second, larger recreation facilities; third, better economic conditions; fourth, travelers' aid.

It is further recommended that there should be an institution to which dissolute women might be committed under indeterminate sentence, and trained reformatory methods, and that, further, there should be a permanent aid to citizens.

Let me again emphasize the significance of the fact that the commission comes to a definite conclusion that no system of toleration or relementation can be satisfactory. Vice has become an organized business. Such an organization of immorality must be suppressed.

While this report is not to be compared in extent with that issued by the Chicago commission, inasmuch as it does not attempt to present evidence in detail, it, nevertheless, is a concise and clear statement worthy of serious consideration.

University of Pennsylvania.

CARL KELSEY.

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HAND BOOK OF MENTAL EXAMINATION METHODS. By *Shepherd Ivory Franz*. Nervous and Mental Disease Monograph Series, No. 10, New York, 1912. Pp. 165. Price, \$2.00.

This volume is intended for the use of psychiatrists, neurologists and students. It is a collection of methods of examination which have been successfully used in psychological and psychiatric practice. A few of them have been devised by the author himself. As the magnitude of the volume indicates, there is a wealth of tests described. It is not expected, of course, that every one of them must be applied in order that a thorough investigation into an individual's mental status may be obtained, but alternative methods, it is suggested, are often necessary in any examination. The references at the end of each chapter, mainly to books and articles in the English language, will be found of special value to the psychological and medical student. One can easily overlook some crudities in expression from the psychological point of view when one looks beyond to the practical service which the tests have been made to serve successfully in the government laboratory for the insane at Washington, D. C. The author says justly that it is a fallacy, proven so by experience, that one, by the application of mere common sense, can make a thoroughgoing diagnosis of the mental status of a patient. Common sense is merely the starting point for scientific investigation.

One of the most essential requirements in conducting a mental examination is the co-operation of the subject. This is secured in the psychological laboratory in which normal processes are being investigated by the scientific interest of the subject. That interest, however, cannot be taken for granted in dealing with the abnormal. On the contrary it should be assumed that the scientific interest is absolutely lacking in these cases. For this reason one on the outside at any rate might be led to doubt whether there are not a great many methods described in this volume, the usefulness of which would be minimum. Hence the absolute requirement that anyone to whom is assigned the task of testing the abnormal should be one who has had a considerable observation at least of the abnormal classes in order that he may discern what methods are best to be selected from the group which Dr. Franz has set before us.

The teacher of psychology owes Dr. Franz a debt of gratitude for having brought together in compact form, as Whipple has done in the field of educational psychology, those tests which he has found useful in his special field. One wishes, however, after examination of the book, that he had told his readers which of these tests he finds on the whole most useful to his purpose. Such a statement would be of great assistance to those who are looking for methods of mental examination to be applied to delinquents in connection with criminal court practice.

Northwestern University.

ROBERT H. GAULT.

THE RIDERS OF THE PLAINS. By *A. L. Haydon*, Chicago. A. C. McClurg & Co., 1910. Pp. 380.

The greatest fault to be guarded against in any work concerning the

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Royal Northwest Mounted Police is over-enthusiasm, but the author of this book, although given extraordinary opportunities for securing information, seems not to have made this error, but to have absorbed sufficient of the police reticence to state only the essential facts. The Royal Northwest Mounted Police, when it was instituted, had one very great advantage over municipal police forces in that the forces of corruption and evil against which it had to contend were not organized, nor always permanent, as for example, the Indian question and the railroad builders. It must be unhesitatingly admitted that Canada has been more successful in handling the Indians than the United States, but it should be mentioned that England's policy in Canada during the Revolutionary period was to make the Indians friendly at the expense of the American frontiersmen, a fact which does not make the cherishing of Indian heirlooms in the shape of George III medals quite as complimentary to England.

The firmness and tact of the police from the very first were excellent, and became invaluable when the problem of keeping peace in railroad camps and with perturbed Indian tribes arose. This firmness and dogged persistence have gradually built up a prestige greater than that of any other police force in the world, a prestige which alone has made it possible to use the small, almost insignificant, detachments characteristic of the force, and to place extraordinary dependence on the ability of the men in the ranks.

The organization of the force, which with 651 men patrols, and patrols efficiently, over 2,000,000 square miles of territory, is very simple. There are twelve districts, varying in size from Depot division at Regina with 120 men under the command of the commissioner to the Yukon district with thirty men under a superintendent. The force in each district is divided into detachments from one man up, and scattered wherever protection is most needed. The far northern posts are necessarily small and terribly lonesome in the long winters, but they do much positive good, and their mere presence probably prevents much evil. The variety of work performed is very great and most important. The Yukon division served at one time in at least fifteen distinct capacities, varying from customs officers to nurses. The force has done excellent work in picking out roads, mapping the country, estimating its resources, and reporting on the progress of crops, all much more cheaply than could have been done otherwise. Not the least remarkable fact about the police is that such excellent work is done for such small pay as \$1.00 to a constable after nine years' service.

The conception of the Royal Northwest Mounted Police formed by reading a mere summary of their organization and history gives no adequate idea of the force. It is necessary to give examples of their work. Mr. Haydon has selected some tales which the pen of Jack London or J. B. Connolly might do justice to, but of which the mere recital makes the blood tingle. The value to Canada of such a force in the great unsettled Northwest has been inestimable, but unfortunately, the force as it is now cannot continue indefinitely. As cities spring up and police

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work becomes more complex, even the prestige and ability of this force will be unable to hold back crime and disorder; municipal police will become necessary, and the field for the present force narrow greatly. The day when this will occur is far distant, but when it does come it will mark the passing of one of the finest institutions which American frontier life has called into existence.

Harvard University.

GEORGE H. McCaffrey.

DE L'ACCORD DE LA PENALTE ET DES MOEURS. By *M. Paul Cuhe*,

Revue Penitentiaire et de Droit Penal, January, 1911. Pp. 103-110.

In this article M. Paul Cuhe advocates with warmth as well as force the corporal punishment of prisoners, a cause decidedly unpopular with us, as was evidenced by the comments called forth by Governor Baldwin's advocacy of the same before the Connecticut State Conference of Charities and Corrections.

The idea of a return to the old method of corporal punishment seems strangely discordant in the midst of the almost universal effort to emphasize the duty of the state to educate and reform her criminals rather than simply punish them and reduce crime through fear. Of course, there is the plea that such punishment is both an educative and reformatory measure, and indeed M. Cuhe partly bases his argument on the dictum of a teacher—"In educating a child it is necessary first to appeal to reason, that is to the head, next to descend to the heart, then to the stomach, then if all these appeals have failed, still lower and spank him." For a teacher to whip a child is, of course, a confession of failure to reach him by higher appeals, and is quite indefensible unless these appeals have been made. M. Cuhe, however, in adapting the plan to criminals, thinks it necessary to omit the first two appeals—to reason and feeling—and begin with the third—deprivation or prison, passing on, if this does not suffice, to the whipping.

To the prison he brings the well known objection that it does not punish enough, the life being too pleasant, and states also that the shame of imprisonment does not act as a deterrent on the class for which some deterrent fear is required. In support of the first view he shows that deprivation of liberty is scarcely a hardship to those whose liberty compels them to work from ten to twelve hours a day as slaves of the industrial organization—that in fact the joys of living are greater for them in prison than without. His words remind us of Jack London's story of the American Indian who was imprisoned for some misdemeanor. He was finally liberated, and returned to his tribe, telling them, with pride, how royally he had been housed and fed, clothed and cared for by the whites, and instigating them to go and do likewise. But we need not turn to fiction, for we read that both in England and the United States men break the laws purposely in order to find a home in jail, and we know that parents, in at least one of our large cities, compel their boys to commit petty thefts in order that they may reap the benefits of the training offered by a reform school. What a commentary is this on the lives of these people, on the environment in which they are forced to live,

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and what a chance it would be to make men of them if the prisons were places where trades were taught and men were sent out equipped to face life.

For the whip he claims that its pain is less objectionable than the detriment to health incurred in imprisonment, that the corrupting influence of prison life is absent, that it is less expensive for the state, and that the family of the delinquent is not deprived of the wages he might possibly be making. The answering arguments are that prison life has in some instances been made hygienic, that in some instances it has been made educative instead of depraving (witness Elmyra), and that at the present time plans are being discussed which are designed to enable prisoners to earn something for their families.

M. Cuche also suggests that the great aversion to inflicting corporal punishment may be the result of a lessening aversion to the crime; he quotes the aphorism, "Societies have such criminals as they merit," adding that this is also applicable to punishments, and that the morals of a corrupt society are the greatest obstacles to the adoption of penalties which would prove salutary, closing with the words, "When will we deserve that corporal punishment be instituted?"

The reviewer would suggest that the aversion to the punishment may be the result of a lessening aversion to the criminal, but not to the crime, to the growing belief that we must deal with the criminal and not the crime, if we would reduce the crime of the future. The crimes are still as heinous in the eyes of the people, but we have come to see that the man who commits them need not necessarily perish with them—that our task is to kill the crime, but save the criminal.

Lincoln, Ill.

CLARA HARRISON TOWN.

LES PRINCIPES BIOLOGIQUES DE L'ÉVOLUTION SOCIALE. Par *Rene Worms*, Directeur de la Revue Internationale de Sociologie. V. Giard & E. Briere, Paris, 1910. Pp. 119.

The purpose of the book is to present the sciences of Biology and Sociology in their relation to each other. The author considers Comte's classification of the sciences into Mathematics, Astronomy, Physics, Chemistry, Biology and Sociology, and his hypothesis of the reduction of the sciences, as an awkward handling of the subject. He admits Spencer's classification into the inorganic, the organic and the super-organic as valid, but denies the irreducibility of the superorganic to the organic. Although Sociology is more complex—the behavior of cells being simpler than the behavior of individuals—a similarity of description is evident. Sociology becomes a further biology. The theory of the "organistic," however, is not a necessary postulate of this work.

Comte distinguished two parts in Sociology, dynamic and static. The latter is but a convenient abstraction which, to have any real meaning, must be viewed in the light of historical process. When, however, we attempt further to subdivide the science the usefulness of the classification disappears.

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The fundamental principles of biology are the basis for a description of social evolution. Static as well as dynamic sociology depends upon biology, especially upon the laws of adaptation, heredity and selection. In this respect the evolutionary system of Darwin suffices as the skeleton of the science of Sociology.

Adaptation of structure and function in society constitutes social evolution. The cause of such evolution is the personal desire to adapt one's self most perfectly to one's environment and best to utilize conditions to one's own profit. The result is to establish a new equilibrium between the individual and his media, which is not absolute but provisional. All social trend may be defined as adaptation. The two characteristics of adaptation are process and interaction. There exists no stability in nature, least of all in society. No adaptation endures indefinitely and each 'old adjustment is an obstacle to some new one. On the other hand the individual is both modified by and modifies his media.

The author then discusses the aims, the means, and the results of adaptation. We recognize three kinds of media: The cosmic, the organic and the strictly social. The limits of the social media vary with civilization and with the age and condition of the individual. The theory of recapitulation applies to sociology as well as to biology, for as the social relations of the individual increase in complexity during his development so the relations of the group become more extensive and varied along with its development.

The theory of Lamarck applies to sociology, i. e., the different parts are developed through use until the whole becomes greatly modified. The process is also cumulative through many generations. Adaptation may be divided into three parts. The organism reacts to every excitation of the media, habit is formed by the recurrence of the same reaction, and this habit is made *permanent* by being transferred through inheritance to the next generation. The nervous system is the seat of most adaptation and intelligence is the highest function of the nervous system. As with the individual so with society, for to acquire knowledge of the laws governing society is to adapt the race to its environment. Ethnic variation as adaptation to new conditions is frequently noted. Such variation is more social than individual. The group further adapts itself *inter se* and to its surroundings by the development of laws, language and institutions. Just as the life of the individual comprises stages of growth, virility and decline, so with that of the group. Its degree of growth and activity depends upon waste and repair, and when waste predominates, dissolution follows. A social group is limited in size by a law of efficiency, as is a protozoan. When a living cell grows to a size too great for economy it divides, and so does society. The small society, which is a group within a group, may sometimes suffer at the hands of its fellows the death penalty which it imposes on its own aged, sick, or criminal members. In biology we say that although the present generation must die, yet the race is continuous, the germplasm is immortal. May not a dying society solace itself with a like thought? Certainly this is true, for if it has been fit it will survive in its offspring, its colony, its daughter group. Its mores are its germplasm.

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Heredity constitutes an opposing factor to adaptation as well as an aid. Racial characters—mental and physical—are relatively permanent. The author accepts the Lamarckian view of heredity, which obviously suits better his biological-sociological parallel.

The general value of this book lies in the careful formulation of the parallelism between biology and sociology. Dr. Worms has made the book of interest not only to the student of these sciences, but to the casual reader as well, by his wealth of illustration and his clarity of style.

University of Washington.

STEVENSON SMITH.

SELBSTANZEIGEN GEISTESKRANKER. By Dr. Hermann Haymann. Juristisch-Psychiatrische Grenzfragen, Vol. VII, No. 8, 1911.

In his article Dr. Haymann has set forth some very interesting observations upon the self-confessions made by criminals, and the question of their symptomatological value for the study of psycho neuroses. He asks definitely if such confessions do not indicate something pathological, and in order to answer this question he considers three possibilities: first, the crime did not occur; second, the crime did occur, but was not committed by the one who confesses; third, the confessor is indeed the criminal, but the confession is due to pathological motives.

A further classification from the viewpoint of psychiatry is made between confessions which accompany a sound mentality, and those in which mentality is troubled or destroyed. Under the latter all clinical forms can be subsumed. The former class can be conveniently divided into those whose causes lie in disturbances of the feelings or emotions, and those whose causes lie in the intellectual processes in the widest sense.

The rest of his article is taken up with the consideration of these three possibilities, and illustrated with a number of interesting cases, including cases of confessed incendiarism, murder, unnatural vice, and others, which illustrate the three possibilities already mentioned.

Under the cases of intellectual disturbances he includes the confessions made by imbeciles or moral degenerates and cites several instances of incendiarism and murder with *dementia prae cox*. Hallucinations often produce confessions concerning nearest relatives and friends when there is often no foundation in fact for the accusation. Disturbances of perception are recorded like that of the girl who rushed wildly to the police station to ask what charge was lodged against her, because she thought she heard a policeman approaching her door and knocking.

The hysterics and psychopaths receive separate consideration, and are of great interest for their auto-suggestive phenomena, and also because of the lies told by hysterical patients which they know to be untrue, and the melancholic and the epileptic add their burden to the sad confessions of the rest.

The general practical conclusions from these considerations is that the specialist in psychiatry should be brought frequently to give his opinion concerning the value of self-confessed crimes. In some cases such service would prevent legal murder and often unjust imprisonment for

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confessions which are due to disturbances of the intellectual processes, and which are entirely distorted or else have no foundation whatever in fact.
University of Pennsylvania. ARTHUR HOLMES.

ELEMENTI DI SOCIOLOGIA CRIMINALE. By *Francesco Scarlata*. Collezione di Opere Giuridiche e Sociali No. II, Fratelli Bocca Palermo, 1910. Pp. 280.

Francesco Scarlata, president of the Circuit Court of Palermo, gives in his elements of criminal sociology a very comprehensive symposium of the different theories advanced by the leading writers and thinkers in Italy on the question of general and criminal sociology. He has searched the field with the greatest industry for arguments supporting his own theories. Lombroso, Ferri & Garofalo are, of course, the most quoted authors; the influence of this trio has been great not only in Italy, but has stimulated writers all over the world. The exponents of sociology sometimes, however, try to prove too much. Our author falls into the same error, and asks for the impossible, when he demands, for instance, that social laws shall only be given by sociologists. Plato dreamed of this in his utopia.

Socialistic doctrines are increasingly stirring up arguments, and in different places Signor Scarlata discusses their merits. He shows himself, like so many professional people of high standing, in sympathy with not a few of the demands of the party. Syndicalism, anarchism and nihilism encounter his wrath; he holds them responsible for a good many criminal acts. The book is written absolutely from the Italian point of view, and next to France, Italy has probably suffered most from the excesses of syndicalists and anarchists.

The work begins with a general discussion of the place sociology occupies among the sciences. Criminal sociology finds its place among the legal sciences. It was Lombroso's discovery that man does not become all of a sudden a criminal as a result of some arbitrary decision. In his opinion the criminal type represents an atavism, i. e., an anthropological phenomenon. Ferri & Garofalo studied the social side of crime and came to the conclusion that, besides anthropological influences, social and physical conditions are responsible for crime. As we are able to change the former by proper legislation, it is thus possible to prevent, or, at least, reduce crime, while society must take steps to protect itself against habitual criminals by repressing them.

Crime and criminals are studied in their historic evolution in two highly interesting chapters. At the beginning of organized society we see that only political religious offenses are put down as crimes. State and religion were bound together, offense against one meant offense against the other. Later on we notice in Greece a division in *jus divinum* and *jus humanum*. Rome, under the emperors, developed the *jus privatum*. During the Middle Ages we find in the feudal laws that might was right, the decisions of the feudal lord were arbitrary. In the German codes we find a regular tariff of fines for different offenses.

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While Cicero demanded the repression of criminals, because they offended the absolute justice by their action, modern law holds that punishment should be doled out in order to protect the personal liberty and safety of the citizens.

Crimes are divided into two classes, those against the state and those against people and property. While discussing crimes against the state, the author upholds the right of the citizens to open revolt against a ruler who oppresses them. He condemns, however, a revolution, if the same results can be obtained by peaceful methods. But who shall be the judge?

The study of the factors of crime and of the world of criminals is unusually instructive. Surroundings, climate, and our inheritance from our forefathers are discussed, also education of the intellect in order to suppress the natural and savage instincts in us. Society is undoubtedly responsible for a good many crimes. It is shown that the much-discussed associations of criminals make use of co-operation by which so much is attained in life. The law of imitation leads criminals to adopt these modern methods. It is not possible to put criminals down as a pathological race, for they are recruited from all classes of society. There is, however, a great differentiation in criminal acts, according to the stratum of society to which the individual belongs. Almost all of them show psychic anomalies.

Crime, especially among minors, is increasing. The Italian statistics show how age, sex, economic and family relations exercise a great influence upon the general criminality. The last chapter of the book deals with means of prevention. Here we must consider that the author lives in Sicily, a country where public education has made little progress since the conquest by Garibaldi, where the Mafia is at home, and where brigandage is flourishing. Educational and economic reforms are more needed here than elsewhere. But a reformation of the administration of justice and of penal institutions also seems very urgent. The courts work slowly and are not always accessible to the poor. Juries often render verdicts in open violation of the law, and the judge cannot ask for a reconsideration. Juvenile courts are demanded for juvenile offenders. Here the author shows a deplorable lack of knowledge of modern ideas of criminal sociology, when he urges, for instance, short sentences for minors, and demands that they may be treated in prison in such a way as to make them afraid of backsliding.

Knowing the lack of organization and recognizing the value of co-operation, the author finally asks for the participation of private societies and individuals in bringing about the necessary reforms.

Scarlata's book is not a contribution of new material, but may serve very well as an introduction to criminal sociology on account of the many citations and quotations from the most advanced writers on the subject.

Chicago.

VICTOR VON BOROSINI.

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GAUNER UND VERBRECHER-TYPEN. By *Dr. Erich Wulffen*. Staatsanwalt in Dresden. Dr. P. Langenscheidt, Berlin, Gross-lichterfelde, 1910. Pp. 315.

This work is exactly what its title signifies, a classified portrayal of types of crooks and criminals. Thieves, swindlers, incendiaries and murderers are discussed in hundreds of short narratives written in most clear and interesting style, showing briefly but in minute detail every possible method of performance of crime, the varied motives for it, and the complicated machinery of detecting it.

Especially enlightening are his stories showing superstition, both as a motive for crime, and as a creator of a special field of crime for spiritualists, fortune-tellers, religious fakirs and the like. Cases of all sorts are cited in which the discoveries of modern science are employed successfully in the detection of crime. The stupidity of criminals in seldom being able to think out all details of their deeds sufficiently to escape detection, is dwelt upon at some length.

All of these pictures are presented to us in the light of a brief but compact opening chapter on the intelligence of criminals, dealing with their mental abnormalities which he divides for convenience of discussion into perversions or bluntness of feelings or instincts, and lack of judgment or ability to reason and evaluate properly. Cases of apparently exceptional shrewdness and capability in criminals, he classes with genius in other lines, as an abnormality indicating an over-development in one direction. Most other criminals are below par mentally along the lines indicated above.

Altogether, the book should be fascinating and instructive reading for the public in general and a valuable source of information for those professionally interested either in the theoretical or practical aspects of crime. It would hardly be too much to say that a perusal of the work might have a deterring effect upon criminals themselves, when they see how completely their motives and methods are known, and how effective are the modern means of detection.

Ann Arbor, Mich.

MRS. J. F. SHEPARD.

PRECURSORES DE LA CIENCIA PENAL EN ESPAÑA; estudios sobre el delincuente y las causas y remedios del delito. Por el Padre *Jeronimo Montes*, Professor de derecho en el Colegio de Estudios Superiores de El Escorial. Madrid, 1911, V. Suarez, pp. 745.

This learned author, a representative of the Catholic church, and well known for former historical studies in criminal law, sets himself herein to show that the modern theories of criminality were long ago anticipated by the Spanish theologians and moralists prior to the 1800s. The spirit of the work may be judged from this passage of the Introduction (p. 7): "Before Grotius was born, illustrious Spanish theologians, like Victoria, de Soto, Molina, and Suarez, had written on natural law and international law. Two centuries before Beccaria, and with better arguments, de Castro dedicated an extensive treatise to the

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study of penology, Vives vigorously attacked the theory of judicial torture, and all the Spanish moralists protested against the cruelty and excess of punishments practiced throughout Europe. But the utterances of these eminent writers were premature and vain; while Beccaria's work had the good fortune to come at a time feverish for reform, in which illusions like that of the social compact passed for indisputable verities and prevailed in spite of their errors. * * * So eminent a legal philosopher as Ihering has admitted that the ideas set forth in his 'Zweck im Recht' had been expounded with admirable clarity and simplicity, centuries before, by St. Thomas Aquinas. How many of our modern legal writers would have to make a similar admission, if before printing they had consulted the works of the older theologians and jurists!"

Our author is amply familiar with modern science in all its aspects; and in fact divides his work into three parts corresponding substantially with Lombroso's division in his "Crime, its Causes and Remedies" (recently translated into English as Vol. III of the Institute's series on Modern Criminal Science). Part I deals with "Physiognomic Science and the Criminal Type." Part II with "Etiology, or Causes of Crime;" and Part III with "Prophylaxis, or Preventive Remedies for Crime." Under each head (25 chapters in all) he passes in review the numerous Spanish theologians, moralists, and jurists, and with passages from their works he points out the attention given by them to the same problems and the same materials that now occupy the works of modern criminalists.

Needless to say, the author's viewpoint is that of one who laments the churchless materialism of modern service, and sees no hope for any stable solutions otherwise than by reverting to the essentially religious views of the church's earlier authors, these "incomparable" thinkers, as he terms them. The modern discoveries as to the limitations of atavism, for example, he thinks may result in verifying the correctness of the limits of the Old Testament curse pronounced on the sins of the fathers, viz.: the fourth generation (p. 167). The influences of senility, of alcohol, of food and climate, on heredity, "all this was studied by the early writers, and can be found treated in books which do not deserve the oblivion and disesteem to which they have been consigned by modern scientists" (p. 197). The administration of justice in the 1500s in Spain was (p. 445) "the most perfect, the most benevolent, the most clement and Christian then known in the whole world; although it has passed into history as a type of cruelty—just as Spain to-day passes for an intolerant and inquisitorial country, though it tolerates things which no other nation tolerates. When will Legend yield place to History?" Again (p. 575), "the differences of race and religion have in Spain always been a copious source of crime, particularly in the 1500s and 1600s. The converted Moors and their descendants in particular were then numerous; there was a fear of a general uprising by them; popular hatred and bloody crimes were caused by race antagonism to them; and all this called for a radical remedy. After trying other

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measures in vain, the government found it necessary to resort to the extreme and only safe measure, their expulsion from Spanish territory."

Well, the rest of the world is convinced that two of the greatest crimes in history were the Spanish persecution of Protestant and Jewish heretics by the Holy Inquisition, and the expulsion of the Spanish Moriscos in 1609,—crimes which were also the most colossal blunders, for they emasculated Spain of its most important elements for intellectual and industrial progress, and dealt it a blow from which it is only to-day recovering. Any modern scholar who defends the Spanish Inquisition and the Expulsion of the Jews and the Moriscos, in such terms as the above, classes himself; his school of thought does not merit attention, outside of Spain itself.

This book is interesting as a revelation of the reactionary forces with which modern science and enlightened progress is still obliged to struggle in that country. All the more honor to those who, like Altamira, Salillos, Dorado, de Quirós, and others, are maintaining successfully the spirit of true legal science against such obstacles.

Northwestern University.

J. H. WIGMORE.

DIE PRÜGELSTRAFE. Von Dr. Ernst Feder. J. Guttentag: Berlin, 1911.

This little treatise leads us to the conclusion that the demand for corporal punishment, as it appears from time to time in the German parliament and is sometimes stormily voiced by theorists and practical men everywhere, is based not on differentiating considerations of criminal policy but on a slogan, a catch-word, a feeling protest against that stage of our humanity that is so often censured by lack of understanding.

This slogan has sometimes been traced back to Mittelstädt's well-known work "Gegen die Freiheitsstrafen" (1879) in which too a lance is broken for corporal punishment and its greatest enemy is apparently found in the "womanish, faint-hearted humanity of recent decades." But already a hundred years before that the Prussian criminalist Klein recommended corporal punishment to his "sensitive age," the rejection of which betrayed "more softness than prudent philanthropy." It is interesting to notice that in one instance corporal punishment is advised in mitigation of an over-harsh penal system and in the other as a means of increasing the severity of one that is too mild, in other words, to see that it too has been subject to the change of purpose that has affected all legal institutions.

Dr. Feder's knowledge of the history of corporal punishment is amazing; not less than sixty countries are treated in their position regarding it, and with brilliant dialectics it is proved that the twentieth century has no reason to return to it.

North Easton, Mass.

ADALBERT ALBRECHT.

STIMSON'S LAW DICTIONARY. By *Frederic Jesup Stimson*. New edition, revised and enlarged by Harvey Cortlandt Voorhees. Little, Brown and Company. Boston, 1911.

This admirable work of Prof. Stimson as originally prepared by him

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has been largely retained in the new edition, and nearly two thousand important words have been added and many citations and references to text-books and decisions inserted by Mr. Voorhees, designed to lead the researcher to a fuller understanding of the meaning and practical use of the words defined and explained. No other law dictionary contains so many definitions and translations of French and Norman-French law terms. A special feature of the new edition is the very full list (fifty-three pages) of abbreviations used in law books, and a table of British Regnal years has been added in the appendix.

North Easton, Mass.

ADALBERT ALBRECHT.

DIE PSYCHOPATHISCHEN KONSTITUTIONEN UND IHRE SOCIOLOGISCHE BEDEUTUNG. Von Dr. Med. *Helenefriederike Stelzner*. Berlin: S. Karger, 1911. Pp. 249.

Dr. Stelzner herself collected the material for this valuable book in the psychiatric clinic of the Imperial "Charité" in Berlin, as a school physician, in a female reformatory and as an insanity expert of the juvenile court in Berlin. She is a highly-gifted pupil of the celebrated psychiatrist Prof. Ziehen, but, in spite of all her special studies in the field of psychiatry, she has not allowed herself to be robbed of her perception for great connections. To her, persons of psychopathic constitution are not merely more or less interesting "cases" but phenomena of the greatest sociological importance. Whence do they come and whither do they go, these inhabitants of the borderland between mental disease and health? What values do they represent and how are these values to be used? What damage is done by their social descent and how can it be met? When and how does their normal attitude change into that, peculiar to the psychopathic constitution?

This last question has been answered as comprehensively as possible by Prof. Ziehen in his "Lehre von den psychopathischen Konstitutionen" and the admirable system that he constructed in connection with his investigations is also presented in his "Prinzipien und Methoden der Intelligenzprüfungen." It must still remain a question, however, whether these methods of testing intelligence really reach to the bottommost depths, whether they actually solve all riddles. It seems to us that for the future there still remains a great, a very great deal to be done and that, in some cases at least, the Freudian psychoanalysis would be able to dig deeper than the intelligence tests of Prof. Ziehen and his pupils.

What is most interesting to the readers of this journal in Dr. Stelzner's book, is the relation of the psychopathic constitution to criminality. The offenses most commonly committed by persons of psychopathic constitution are: theft in all its forms, embezzlement, crimes of violence, offenses against chastity and manslaughter. Against these are ranged as casual factors: uncontrollability of the instincts, increased emotionalism, weakness of will, suggestibility. According to their aetiology the offenses may be divided into two distinct groups: 1, those that are committed as a consequence of a certain symptom of the psychopathic constitution, that are due to uncontrollable passion, impulsive-

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ness, etc., and 2, those that represent the symptom itself, the delight in what is forbidden, pleasure in the performance of an evil deed, the enjoyment of breaking the law. How each of these two groups is to be treated by the law, the judge and the physician, makes up the most brilliant part of the work. Here our educators, etc., and, in particular, the judges of our juvenile courts, may learn much, for here practical proposals are made, based especially on two theses: 1. A clear distinction must be made between weak-minded children and children of so-called psychopathic constitution. 2. The care of children with psychopathic constitutions requires special curative, educational institutions, homes in which the inmates are freed from all other influences and in which nothing, absolutely nothing, suggests a reform school, for whatever cause the child may have been committed. How such a school must be built and managed should be carefully read, on pages 235 to 240, for this is a field of labor in which, not only in Europe but also in America, practically everything still remains to be done.

North Easton, Mass.

ADALBERT ALBRECHT.

Journal of the American Institute of Criminal Law and Criminology

Managing Editor, **ROBERT H. GAULT**

Assistant Professor of Psychology, Northwestern University.

Managing Director, **FREDERIC B. CROSSLEY**

Librarian of the Elbert H. Gary Collection of Criminal Law and Criminology, Northwestern University.

ASSOCIATE EDITORS

Adalbert Albrecht, North Easton, Mass.
Victor von Borosini, Sociologist, Chicago.

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John H. Wigmore, Dean of the Northwestern University Law School, Chicago.

Elmer A. Wilcox, Professor of Law, University of Iowa.

John B. Winslow, Chief Justice of the Supreme Court of Wisconsin; President of the American Institute of Criminal Law and Criminology.

Communications relating to contributions and books for review should be addressed to the Managing Editor, Evanston, Ill.

Subscriptions and business correspondence should be addressed to the Managing Director, Northwestern University Building, 31 W. Lake Street, Chicago, Ill.

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CONTRIBUTORS TO THIS NUMBER

Giulio Q. Battaglini, Professor of Law and Criminal Procedure in the Royal University of Sassari, Italy; a distinguished writer on legal and criminological subjects. His more important publications are: (1) *Le norme del Diritto penale e i loro Destinatari*, Roma, Loescher, 1910; (2) *Die Begriffe Strafe und Schadenersatz*, in *Archiv für Rechts und Wirtschaftsphilosophie*, IV Band, Heft 3; (3) *Tul fondamento Giuridico Della querela privata* (*Revista Di Diritto e procedura penale*, anno II, fascicolo II); (4) *Il Pericolo di Offesa nella legittima Difesa* (*Supplemento alla Revista Penale*, maggio-giugno, 1911); (5) *Das Problem der Bekämpfung des Selbstmordes*, *Schweizerische Zeitschrift für Strafrecht*. He is one of the editors of *La Giustizia Penale*, to which he is a frequent contributor.

H. H. Goddard, A. B. Harvard College 1887, A. M. 1889; instructor at the University of Southern California 1887-1888; fellow in psychology at Clark University 1896-1899, Ph. D. 1899; German universities 1903-1904; professor of psychology, State Normal School, West Chester, Pa. 1899-1906; director of department of research, Vineland, N. J. Training School from 1906; member A. A. A. S., American Psychological Association, American Health League, American Society for Study of Feeble Minded; author of *Feeble Mindedness and Social Problems*, 1912; contributor to educational and psychological journals.

Warren F. Spalding is a veteran of the Civil War. Journalist in Boston 1870-1879. Chosen Secretary of the State Board of Prison Commissions, 1879. He was the first General Superintendent of Prisons, in Massachusetts, and organized the new labor system when contract labor was abolished. He resigned both positions in 1888. Secretary of the Massachusetts Prison Association, a private charity, 1889 to the present. He has been instrumental in effecting legislation for the systems of dealing with drunkenness, the suspended sentence, the indeterminate sentence for the state prison, the health-inspection of station houses, the law for the hastening criminal trials, etc. Mr. Spalding has prepared many valuable papers on crime for important conferences and the public press. He is well known as a lecturer on criminology.

Booker T. Washington, graduated at Hampton Institute, Va., 1875; honorary, A. M. Harvard University, 1896, LL. D. Dartmouth, 1901; Principal Tuskegee Institute, 1881 to the present; author of *Sowing and Reaping*, 1900; *Up from Slavery*, 1901; *Future of the American Negro*, 1899; *Character Building*, 1902; *Story of My Life and Work*, 1903; *Working with Hands*, 1904; *Tuskegee and Its People*, 1905; *Putting the Most into Life*, 1906; *Life of Fred Douglass*, 1907; *The Negro in Business*, 1907; *Story of the Negro*, 1909.

William H. Baldwin. Soon after graduating at Western Reserve College Mr. Baldwin entered the First National Bank of Youngstown, O., of which he became cashier in 1877. He resigned that position in 1887 to take charge of a manufacturing company, and was actively associated in the management of large iron and steel companies in Youngstown, Chicago, and New York until 1901. Since then he has devoted himself to social work. He published several years since a careful study of the "Family Desertion and Non-Support Laws" of all the states, and has written numerous articles on that subject and on matters connected with the struggle against tuberculosis, in which he is also specially interested.

Joseph M. Sullivan was educated at the Quincy Grammar School, the Boston Latin School and under private instruction. He graduated from the law department of Boston University in the class of 1893, was admitted to the bar in the same year, and is at present a bail commissioner for Suffolk County, Massachusetts. He is well known in the field of prison reform and has been First Grade Lecturer at the Massachusetts Reformatory. He is author of a dictionary of "Criminal Slang" and is considered by competent judges to be one of the best informed men on the habits and characteristics of thieves in the United States. He is a frequent contributor to the leading legal periodicals.

Chester T. Crowell is managing editor of *The Statesman*, the morning newspaper published in Austin, Texas. He has been editorial writer of the *San Antonio, Texas, Express* and managing editor of *The Mexican Herald* of the City of Mexico. As a newspaper man he has helped make the demand for reform of judicial procedure in Texas an issue in recent campaigns. Mr. Crowell is a contributor of both special articles and fiction to about fifteen widely known magazines.

William E. Higgins, professor of pleadings and practice in the School of Law of the University of Kansas since 1899. Formerly he was a member of the committee which drafted the new code of civil procedure of Kansas, and is now the chairman of a special committee on Crimes and Criminal Procedure of the State Bar Association of Kansas.

PROGRAM OF THE FOURTH ANNUAL MEETING OF THE INSTITUTE.

The fourth annual meeting of the American Institute of Criminal Law and Criminology will be held jointly with the Wisconsin Branch in Milwaukee, immediately following the sessions of the American Bar Association, August 29-31. Following is the program:

First Session, Thursday, August 29, 1912, 2 P. M.

Presiding Officer—Chief Justice John B. Winslow of Wisconsin, President of the Institute.

Address of Welcome—His Excellency, the Governor of Wisconsin; Hon. G. A. Bading, Mayor of Milwaukee.

The President's Address—Chief Justice John B. Winslow of Wisconsin.

The Annual Address—Hon. Frank L. Randall of Minnesota.

Report of Committee G of the Institute, on Crime and Immigration—Gino C. Speranza of New York, Chairman.

GENERAL DISCUSSION.

4:30-6:30 P. M.—Informal reception by the Committee on Arrangements to members of the Institute at the Hotel Pfister.

7:00 P. M.—Annual dinner of the American Bar Association at Hotel Pfister. Open only to members of the American Bar Association. Tickets should be procured from the Secretary of the Association.

Second Session, Friday, August 30, 1912, 9:30 A. M.

Presiding Officer—Judge Alexander H. Reid, President of the Wisconsin Branch.

The Annual Address of the President of the Wisconsin Branch—Judge Alexander H. Reid of Wausau.

Report of Committee A of the Wisconsin Branch—C. B. Bird of Wausau, Chairman.

Special Report on the Office of District Attorney—M. B. Rosenberry of Wausau.

GENERAL DISCUSSION.

Report of Committee C of the Wisconsin Branch on the Organization of Courts—John B. Sanborn of Madison, Chairman.

Report of Committee D of the Institute on the Organization of Courts—Professor Roscoe Pound of Massachusetts, Chairman.

PROGRAM OF THE ANNUAL MEETING

GENERAL DISCUSSION.

LUNCHEON.

12:00—Luncheon at the Hotel Pfister. Persons desiring to attend the luncheon should notify the Secretary and procure tickets in advance.

Third Session, Friday, August 30, 1912, 2 P. M.

Presiding Officer—Chief Justice John B. Winslow of Wisconsin.

Report of Committee C of the Institute on Judicial Probation and Suspended Sentence—Judge Wilfred Bolster of Massachusetts, Chairman.

Report of Committee F of the Institute on the Indeterminate Sentence and Release on Parole—Edwin M. Abbott of Pennsylvania, Chairman.

Special Report on the Indeterminate Sentence—Herman Grothphorst of Wisconsin.

Special Report on the Constitutionality of the Indeterminate Sentence—Judge C. D. Rosa of Wisconsin.

GENERAL DISCUSSION.

Fourth Session, Friday, August 30, 1912, 8 P. M.

Presiding Officer—Judge Alexander H. Reid, President of the Wisconsin Branch.

Report of Committee D of the Wisconsin Branch on Sterilization of Criminals and Defectives—Dr. A. W. Wilmath of Wisconsin, Chairman.

GENERAL DISCUSSION.

Report of Committee F of the Wisconsin Branch on Prison Labor—A. F. Beliaz of Wisconsin, Chairman.

Special Report on Prison Labor—Dr. E. Stagg Whitin of New York, Secretary of the National Committee on Prison Labor.

GENERAL DISCUSSION.

Report of Committee I of the Wisconsin Branch on the Treatment of Recidivists—R. E. Smith of Wisconsin, Chairman.

GENERAL DISCUSSION.

Fifth Session, Saturday, August 31, 9:30 A. M.

Presiding Officer—Chief Justice John B. Winslow of Wisconsin.

Report of Committee A of the Institute on System for Recording Data Concerning Criminality—Judge Harry Olson of Illinois, Chairman.

Report of Committee No. 3 of the Institute on Criminal Statistics—John Koren of Massachusetts, Chairman.

Report of Committee E of the Institute on Criminal Procedure—Judge William N. Gemmill of Illinois, Chairman.

THE AMERICAN INSTITUTE AND THE AMERICAN BAR

GENERAL DISCUSSION.

Report of Committee B of the Wisconsin Branch on Testimony of Non-residents and Incriminating Evidence—Judge C. A. Fowler of Wisconsin, Chairman.

GENERAL DISCUSSION.

Report of Committee E of the Wisconsin Branch on Affidavits of Prejudice—B. R. Goggins of Wisconsin, Chairman.

GENERAL DISCUSSION.

Sixth Session, Saturday, August 31, 2 P. M.

Presiding Officer—Chief Justice John B. Winslow of Wisconsin.

Report of Committee No. 1 of the Institute on Co-operation with other Organizations—W. O. Hart of Louisiana, Chairman.

Report of Committee No. 2 of the Institute on Translation of European Treatises on Criminal Science—John H. Wigmore of Illinois.

Report of Committee No. 4 of the Institute on State Societies and Membership—Oliver S. Rundell of Wisconsin, Chairman.

Report of Committee B of the Institute on Insanity and Criminal Responsibility—Edwin R. Keedy of Illinois, Chairman.

Report of Secretary.

Report of Treasurer.

Report of Managing Editor of the Journal.

Report of Managing Director of the Journal.

Election of Institute Officers.

Adjournment of the Institute.

Immediately following the adjournment of the Institute, there will be a business session of the Wisconsin Branch for the hearing of special reports and for the election of officers.

GENERAL DISCUSSION.

THE AMERICAN INSTITUTE AND THE AMERICAN BAR.

The law in its classic theory regarded crime as a purely objective thing, an injury to society it is true, but a material damage. It did not regard crime with aversion or even as the outcome of moral turpitude: it regarded merely the result, and punishment was administered, as compensation for the loss.

This theory looked to the past: It was concerned with,

(a) The material damage to society;

(b) The injury other than material, and finally came to regard punishment as:

(c) The expiation of crime, as for a sin.

Neither the earlier theory nor its later development looked to the

THE AMERICAN INSTITUTE AND THE AMERICAN BAR

future. Only in recent years have students of the subject come to do so. And the change of attitude marks the beginning of the modern school of criminology, for it finds its center and its objective in *the individualization of punishment*.

So long as the law was concerned with the thing done, the objective fact of crime, regardless of why, or by whom, it was committed, the result being the same the punishment should always be uniform. When, however, crime becomes a subjective thing as well, viewed in the light of contributing and palliating circumstances, together with the result, individualization of punishment became necessary.

The keynote of modern criminal science is then individualization of punishment. This cannot be too often emphasized. It considers the offense against society and fully protects it, but nevertheless keeps in view always as of equal importance the offender, his heredity, his environment, his motives, his possibilities, his limitations, and tries to so regulate the punishment to, without sacrificing the rights of society, save if possible the offender for a useful place in it.

The Bar has been accused of taking no interest in this great modern movement. Unfortunately the charge is in a large degree justified. Yet it may be explained. When crime was regarded merely as an objective fact for which there was a penalty, the law stated the penalty and the courts concerned themselves only with the law, taking no interest in the causes of the crime. The change from the old idea to the new, however, has changed all that, and with the awakening to the importance of the individual factor in crime, came a desire for a scientific study and acknowledgement of the contributory factors to crime. Such an awakening has been taking place for many years in Continental Europe; it has only just begun in America. It became necessary, therefore, for the American student to know the results of the European experiments along this line, and to formulate our own experiences.

Dean John H. Wigmore, with happy inspiration, conceived the idea of a conference representing all classes interested in the administration of punitive justice. Such a conference was called as a unique and useful way of celebrating the 50th anniversary of the founding of the Northwestern University Law School. Out of that first National Conference of Criminal Law and Criminology, whose purpose is "to further the scientific study of crime, criminal law and procedure, to formulate and promote measures for solving the problems connected therewith, and to co-ordinate the effort of individuals and of organizations interested in the administration of certain and speedy justice."

Two conferences have been held since: The second in Washington

PRISON REFORM IN OHIO

in 1910; the third in Boston in 1911; and the fourth is to be held in Milwaukee, August 29th, 30th, and 31st, 1912, in connection with the meeting of the American Bar Association.

The need of such an organization and of such conferences, to anyone giving the subject even the most cursory attention, must indeed be apparent. The great number of problems connected with the whole subject of crime, the formulation and administration of the criminal law and contributory sciences which may be properly included under the term criminology, show to any observer the necessity for an organization of scientifically trained men—the Bench and the Bar, the professors of law in the great universities of the country, the criminologists, the penologists, the sociologists, the teachers, the physicians, the alienists, the superintendents of juvenile and reformatory institutions, the psychologists, the police officers, the probation and parole officers—men of public spirit who have the knowledge and desire to labor tirelessly for a solution of those great problems.

Of such is the American Institute which formulates for discussion, both in its national conferences and through its state societies, these problems, calling them to the attention of the country, forcefully, thoughtfully, convincingly, attracting the attention of the Bench and the Bar, as few organizations could hope to do and bringing together these scientific men whose conclusions will be respected and given attentive consideration, both by the Bench, charged with the greatest responsibility in such matters, and by the Bar, which must guide, whether it would or not, if progress is to be made.

The Bar has its duty in connection with this great movement which cannot be shirked. Unless it assumes it cheerfully, its leadership will be wrested from it and the community will force progress under less competent guidance. The importance of the work of the American Institute of Criminal Law and Criminology and that of its Journal in making that work known cannot be overestimated. The others interested have fully awakened to this fact. Let not the Bar be the laggard in this mighty procession towards a proper administration of criminal justice in America.

NATHAN WILLIAM MACCHESNEY.

PRISON REFORM IN OHIO.

Ohio is taking a distinctly forward step in prison management. The last vestige of the contract labor system has been abolished. Convicts are no longer to be driven like slaves for unjustly swollen profits in the service of corporations who have secured their labor at small cost.

PRISON REFORM IN OHIO

This reform has come about in response to a radical change in public sentiment.

The problem now is what to do with the 1600 idle convicts. Temporarily, according to Carl D. Ruth in the *Cleveland Leader* for July 21, they are being employed at tearing down the old buildings in which bolt and nut and cigar manufacturers have made their huge profits; others are employed in a huge stone quarry near the city of Columbus, and still others are at labor on the state farms during the summer months, or are kept busy with repairs at other state institutions.

New plants are to be established within the penitentiary at Columbus for the manufacture of soap, shirts, underclothing, overalls, shoes, etc., the products of which will be *used by the state* (hence the term "state use system") for its wards in the penitentiary and reformatories throughout the commonwealth. Another industry at which many prisoners will be employed is coffee-roasting. Ovens are being installed. Hundreds of tons of coffee are used each year in the state institutions of Ohio. The green berries will be purchased on the docks in New York, and shipped to Columbus, whence the roasted product will be distributed.

The law forbids the sale of prison-made goods in the general market, and hence the competition of the state with free labor is restricted. It is estimated that the penitentiary and the state reformatories will be able to use practically the entire output of the prison factories. If not the law permits the sale of the surplus to county and municipal institutions.

There are yet some particularly flagrant illustrations of the contract system of prison labor in this country. In Connecticut, if the *New York Daily People* of December 26, 1911, is correctly informed (see this Journal, Vol. III, No. 1, p. 117), contracting manufacturers have forced prison officials to resort to physical punishment in order to speed up the convict workers, and a political boss replied to citizens who were indignant because of the situation, "Well, what in h— are you going to do about it?"

The system continues in vicious activity in South Dakota, where many men are employed at making shirts. The state receives three cents for the manufacture of each shirt and on the average each man earns fifty-four cents a day for the commonwealth. The contract expires in 1915. The people of South Dakota forbid its renewal.

Many are very optimistic with respect to the reformation of criminals and no doubt there are numerous striking illustrations of successful efforts in that direction. The permanent rehabilitation of the adult criminal, nevertheless, excepting the one who has slipped but once by

ERRORS OF CRIMINAL JUSTICE

accident, so to speak, will continue to be the subject of unfavorable prophecy. Even, however, if we may not be able, by all means, to apply educational measures so skillfully as to reform great numbers, even if it were impossible by all means to set but one right, we should still be unjustified on any grounds whatever in placing this obstacle—prison contract labor—in the way. We must credit many convicts with intelligence enough to recognize that contractors are waxing fat upon practically unremunerated toil. It is a bad object lesson in the exploitation of the helpless; one that does not add to the chances of honest life after prison terms have been served. It is immoral, too, on the part of the contractor and on the part of the state, which allows it in as far as it consists in securing a gain without making adequate return therefor.

There is an aspect of the state use system that must not be overlooked. Besides avoiding the "horrible example" afforded by the old system, it is an economy to the state. Dr. Arthur F. Shepard of the Ohio State Board of Administration, estimates that henceforth the state of Ohio will save several thousands of dollars annually that have hitherto been paid from the treasury for the purchase of soap alone for the state penal institutions, and other thousands on each of the other commodities to be manufactured in the penitentiary.

ROBERT H. GAULT.

ERRORS OF CRIMINAL JUSTICE.

In this JOURNAL (May, 1912, p. 131) are printed the replies of prison officials of the United States and Canada, well-known and reliable men, to the question whether they had ever known of unjust condemnation to death or to imprisonment. These gentlemen generally agree in the testimony that, so far as their personal knowledge extends, the convictions have been just and well founded. It would seem from this testimony that British and American procedure is eminently fair to the offender; many think it favors the criminal to the detriment of the public. It is well for the nation to be reassured on this point, for serious distrust of the judiciary would be a distinct calamity.

At the same time the courts are not infallible. Errors do occur in both civil and criminal matters. Without questioning in the least the value of the opinions and memories of wardens we should not end the inquiry with this evidence, but should carry it into police and court records. When the penalty can be corrected the state can indemnify, if it will, the innocent sufferer; but when the penalty is death the wrong done in the name of justice can never be set right; and it is here that the inquiry becomes most important. In a recent volume of 523 pages

THE CORONER IN ITALY AND AMERICA

by Erich Sello (*Die Irrtümer der Strafjustiz und ihre Ursachen*, Berlin, R. v. Decker) is an immense collection of cases of error of courts in various countries of Europe taken from standard sources, and the exhibit is one that cannot be ignored. The cases are recited with fulness of detail. The sources of error are numerous and varied. In some cases the court condemned to death or life sentence persons who were insane; in others the witnesses rendered false testimony to shield themselves or gratify revenge; in others the medical post-mortem examination was superficial and the experts' advice misleading. In some cases the conviction was based on resemblance of hand-writing, together with bad reputation; in others a mad impulse of a mob urged by a plausible suggestion influenced the decision; in others malice was affirmed when the homicide was really in self-defense; there were cases of mistaken identity; in others the case turned on the testimony of children suggested by the police.

These stories do not tend to impeach the integrity or wisdom of courts; they do compel consideration of the chance of irreparable injustice in enforcing capital punishment. They should also awaken discussion as to the reasonableness of providing indemnity for men who have been put to expense, and subjected to humiliation and unspeakable misery by police and public prosecution without even an apology, much less pecuniary reparation. A great state cannot afford to be mean and unjust when its honor is at stake with its own citizens.

CHARLES R. HENDERSON.

THE CORONER IN ITALY AND AMERICA.

Caesare Civoli has an article in the March-April number of *Il Progresso del Diritto Criminale*, the Italian magazine published in Rome, devoted to the study and reform of the practical application of criminal law in Italy, which shows how different are the difficulties that affect similar institutions under different circumstances. In America, there has been a good deal of criticism of the action of coroners in finding deaths and injuries as due to accident, resulting in the freeing of employes of large manufacturing and industrial corporations, who manage heavy machinery, locomotives, or tramcars. During the summer last past, Judge Sultzberger, of Common Pleas in Philadelphia, commented upon such actions severally, holding that such a discharge was in excess of the coroner's jurisdiction. On the other hand, Civoli, Professor of Criminal Law and Practice in the University of Padua, complains of injustice done on the other side. In Italy, the police make arrests for assault and manslaughter too freely, subjecting persons—

CHIEF JUSTICE HARRY OLSON AND HIS COURT

perhaps guilty—to a detention prior to trial, which often exceeds the maximum term upon conviction. A particular example of this is where the act is in self-defense where, of course, a prison or jail case is always made out. He makes no suggestion as to the best way to overcome the difficulty, as it is impractical to empower the policeman to determine the juridical relation; he can but determine the existence or non-existence of the fact. It seems to an American, it may humbly be submitted, that the personal inconvenience might be reduced to a minimum with a due regard to public safety, by the institution of a coroner's court in Italy and with the conversion of the coroner's court in America into a preliminary court of record with a right of appeal in the commonwealth.

JOHN LISLE.

CHIEF JUSTICE HARRY OLSON AND HIS COURT.

In these days when so much is heard about the "breakdown of the law" and the "law's delays," often ascribed to rules governing pleading and procedure, and to the failure of our judges properly to administer such laws and rules as are in existence, it is refreshing to learn of one court in which a large amount of all classes of litigation is speedily and satisfactorily transacted. The answer to the demand for more promptness by our courts in disposing of litigation is frequently that if we have more speed it must be at an increasing sacrifice of justice, but in the Municipal Court of Chicago we find a court almost up to date with a tremendous and constantly increasing amount of business and hear on all sides expressions only of satisfaction from the people.

This court came into existence about five and one-half years ago upon the abolishment of the Justice of the Peace system of administration of municipal law so notorious that it was a by-word throughout the land. The change in so comparatively short a period of the sentiment of the people of Chicago toward the administration of its law is due to the character of the act creating the court and to the genius of its first and present Chief Justice. Scarcely too much can be said in tribute to Chief Justice Olson, who has been instrumental in building so effective an organization in so short a period with so little to copy or model after. To give a clear conception of the work of this court and the character of cases coming before it, some statistics from its reports are here submitted:

CHIEF JUSTICE HARRY OLSON AND HIS COURT

RESUME OF WORK OF THE CIVIL AND CRIMINAL BRANCHES—COMPARED

Total number of all classes of cases filed and disposed of during the year ending December 3, 1911, as compared with previous years:

	Year Ending November 30, 1907.		Year Ending December 6, 1908.		Year Ending December 4, 1909.		Year Ending December 4, 1910.		Year Ending December 3, 1911.	
	No. of Cases Filed.	No. of Cases Dis- posed of.	No. of Cases Filed.	No. of Cases Dis- posed of.	No. of Cases Filed.	No. of Cases Dis- posed of.	No. of Cases Filed.	No. of Cases Dis- posed of.	No. of Cases Filed.	No. of Cases Dis- posed of.
Civil	37,104	30,877	49,002	46,845	47,113	48,490	48,267	48,649	53,223	50,931
Criminal	15,079	13,755	10,187	10,467	10,057	10,130	9,559	9,825	12,012	11,770
Quasi-Criminal	45,535	44,472	56,698	56,742	62,019	61,781	70,703	70,479	72,189	71,434
Preliminary Hearings	97,718	89,104	115,887	114,054	119,189	120,401	128,529	128,953	137,424	134,135
			8,249	7,721	6,524	6,460	7,701	7,618	9,631	9,526
			124,136	121,775	125,713	126,861	136,230	136,571	147,055	143,661

Number of cases of all classes pending, December 5, 1910..... 9,900
 Number of warrants outstanding (not heretofore classed as pending) 1,365
 Cases of all classes filed during the year ending December 3, 1911 147,055

Civil suits reinstated 158,320
 1,331

Cases of all classes disposed of, year ending December 3, 1911 159,651
 143,661

Total number cases of all classes pending, December 3, 1911 15,990

CHIEF JUSTICE HARRY OLSON AND HIS COURT

SEMI-ANNUAL STATEMENT OF THE NUMBER OF CIVIL CASES FILED AND THE NUMBER DISPOSED OF FROM DECEMBER 4, 1911, TO JUNE 1, 1912. ALSO NUMBER OF DEMANDS FOR TRIAL BY JURY, VERDICTS BY JURY, DISAGREEMENTS, FINDINGS BY COURT, VERDICTS AND JUDGMENTS AND FINDINGS AND JUDGMENTS VACATED, AND FEES PAID TO JURORS IN FIRST AND SECOND DISTRICTS.

Class of Cases—	No. of Cases Filed		No. of Cases Disposed of	
	First Dist.	Second Dist.	First Dist.	Second Dist.
First Class	634	...	538	...
Tort	1341	22	1256	23
Forcible Ent. and Det.	6908	94	6329	97
Attachment	1178	202	1213	206
Distress for Rent	73	2	47	1
Replevin	540	6	511	7
Contract	16116	344	16771	372
Total	26790	670	26665	706
Grand Total	27460		27371	

From December 4, 1911, to June 1, 1912, there were 25 more filed than were disposed of in the First District; in the Second District there were 36 more cases disposed of than were filed. There were 2073 more cases filed and 3485 more cases disposed of than during the same period of last year.

Money Judgments—	First Dist.	Second Dist.
Trial by Court	\$ 627,336.68	\$ 5,145.66
Trial by Jury	235,064.58	2,208.37
By Confession	398,694.05	8,478.91
By Default	839,213.89	13,263.47
Total	\$2,100,329.20	\$29,096.41
Grand Total	2,129,425.61	

	First Dist.	Second Dist.
Demands for trial by jury by Plaintiff	1012	15
Demands for trial by jury by Defendant	1537	16
Verdicts by jury favor of Plaintiff	717	13
Verdicts by jury favor of Defendant	271	8
Disagreements	8	...
Findings by court favor of Plaintiff	16982	400
Findings by court favor of Defendant	8080	285
Verdicts and judgments vacated	19	...
Findings and judgments vacated	688	19
Fees paid to Jurors, Civil	\$67,839.65	...
Fees paid to Jurors, Criminal	10,702.45	...
Total	\$78,542.10	...
Number of Executions ordered	11112	203
Number of Executions issued	10830	203
Number of Mortgages acknowledged	19751	347

CRIMINAL BRANCHES—

Six Months Ending May 31, 1912.

		CASES DISPOSED OF																										
		NEW SUITS FILED					PRELIMINARY					QUASI					CRIMINAL											
		QUASI	PRELIM.	CRIMINAL	TOTAL	DISCH'D	HELD TO C. C.	NOLLE PROS.	DISCH'D WT. PROS.	DISCH'D Def. not Found	TOTAL	DISCH'D	FINED	CO. JAIL	HOUSE COR.	NON-SUIT	DISCH'D WT. PROS.	DISCH'D Def. not Found	TOTAL	DISCH'D	FINED	CO. JAIL	HOUSE COR.	NOLLE PROS.	DISCH'D WT. PROS.	DISCH'D Def. not Found	TOTAL	TOTAL CASES DISPOSED OF
December, 1911..	30	5965	562	1354	7861	101	207	134	30	85	557	2897	1504	3	623	713	136	184	6260	291	349	6	207	201	100	149	1303	8120
January, 1912....	49	4470	634	1117	6221	119	180	132	22	59	522	2906	1047	5	729	635	157	63	5842	302	227	6	161	227	102	99	1124	7488
February, 1912...	38	5472	578	1210	7260	106	253	159	33	102	653	2630	1215	1	740	578	212	147	5524	282	228	9	159	286	82	154	1200	7377
March, 1912.....	39	6036	565	1208	7629	97	234	176	29	51	587	2456	1261	4	778	673	278	153	5803	362	277	16	160	345	93	110	1333	7723
April, 1912.....	64	6388	671	1541	8601	108	223	152	31	84	598	2690	1390	5	632	750	236	117	6220	373	379	12	128	317	116	74	1399	8217
May, 1912.....	84	6705	594	1277	8576	123	175	157	60	116	631	2979	1655	5	777	600	177	283	6476	359	400	19	127	185	132	154	1376	8483
	304	35037	3624	7707	46368	654	1282	910	205	497	3548	16758	8072	23	4678	4450	1186	947	36125	1839	1860	68	942	1561	625	740	7735	47408

6,331 more new suits filed and 7,014 more cases disposed of than during the corresponding period last year.

CHIEF JUSTICE HARRY OLSON AND HIS COURT

MONEY JUDGMENTS.

	Dec., 1907, to Dec. 6, 1908.	Dec. 7, 1908, to Dec. 4, 1909.	Dec. 5, 1909, to Dec. 4, 1910.	Dec. 5, 1910, to Dec. 3, 1911.
First District.	\$3,226,018.92	\$3,706,725.78	\$3,541,092.86	\$4,028,062.85
Second Dist...	42,343.02	50,364.77	52,590.54	68,191.73

Totals ..\$3,268,361.94 \$3,757,090.55 \$3,593,683.40 \$4,096,254.58

The following statement shows by what means this total is arrived at:

Default	\$1,906,112.92
Trial by Court	1,064,279.59
Trial by Jury	419,906.45
Confession	705,955.62
	<hr/>
	\$4,096,254.58

Below is shown by months, the amount of money judgments entered by the Municipal Court of Chicago during the past year, as compared with similar figures for the Circuit and Superior Courts of this county, illustrating, in part, the relief of these courts:

	Municipal.	Circuit.	Superior.
December, 1910	\$321,957.11	\$104,262.36	\$ 97,305.71
January, 1911	298,932.08	110,128.53	102,391.48
February	337,845.37	38,171.12	114,875.47
March	344,164.64	57,773.44	114,871.60
April	333,421.92	92,199.87	154,529.53
May	383,334.53	92,539.57	128,254.02
June	383,811.73	161,396.04	133,872.91
July	377,945.47	76,366.88	124,660.00
August	221,663.17	15,191.59	70,828.36
September	327,784.75	13,818.31	51,997.54
October	371,416.11	290,140.60	79,507.14
November	348,957.76	95,849.54	88,050.90

An examination of these statistics shows:

1. That at the end of 5½ years' operation, the court is able to speed the disposition of business so that it actually disposed of 951 more cases than were filed in the last six months, indicating that here at least there is no "breakdown" because of delay.

2. That money judgments for the last year amounted to over four million dollars. An amount greater than was entered by all the courts in

CHIEF JUSTICE HARRY OLSON AND HIS COURT

the Circuit, Superior and County Courts of Cook County and all the Circuit and County Courts of the state down to Cairo.

The most notable features of the court are:

1. The judges as a body have large administrative powers, with a Chief Justice with very great power to expedite business.

The most significant single act of this body has been the investigation of one of its own members' conduct on the bench and his discipline—suggesting perhaps, a substitute for the *recall* of judges.

2. The power of the judges to make rules of procedure, enabling the Court to adopt the notice system of pleading—with affidavits of claim, and of merits in defense. Under these pleadings about one-half the judgments entered have required only the administrative action of the court, the defendants being unable to make the affidavit of merits.

3. The keeping of accurate and detailed Judicial Statistics.

4. The court is practically self-sustaining.

5. The tendency to reduce crime because of swift judgment. *Eighty per cent* of the criminal and quasi-criminal cases are disposed of within *twenty-four* hours of arrest, and *ninety per cent* of the total within two weeks.

6. The power of the Chief Justice enables him to segregate classes of cases, resulting in the creation of the Domestic Relations Court and a court for the hearing of all automobile speed cases. The work of the Domestic Relations Court is worthy of the attention of all persons interested in American courts and is set forth in detail in the first annual report of its able presiding judge, Charles N. Goodnow.

The court hearing automobile speed cases has been in existence but a short period, but has already practically stopped the speeding mania in Chicago by making one standard of punishment for that offense throughout the city and meting out that punishment quickly.

Perhaps the greatest acknowledgment that could be paid to this great court is that its system or something like it has been adopted in New York City, Buffalo, Cleveland and Milwaukee and will be soon adopted by Philadelphia, Atlanta, Birmingham, St. Louis and Kansas City.

F. B. CROSSLEY.

SOME FUNDAMENTAL PROBLEMS OF CRIMINAL POLITICS¹.
(Apropos of the Draft Penal Codes of Austria, Germany and Switzerland.)

GIULIO Q. BATTAGLINI, ROYAL UNIVERSITY OF SASSARI, ITALY.

Summary: 1. International importance of the Draft Penal Codes of Austria, Germany and Switzerland. 2. Influence on them of Italian criminal politics. 3. The central problem: who ought to be punished? Punishment and measures of security (*sichernde Massnahmen*). The criminal determinable by judicial motives: necessity of punishment: indeterminate sentences. There cannot be a rigid legislative criterion for the application of measures of security: consequent enlargement of the judicial powers: the passing from punishment to measures of security. The measures of security are jurisdictional acts. 4. With the power of substituting measures of security for punishments, and vice-versa, is connected the problem of indeterminate sentences. Objections raised against this institution (Manzini): its advantage in our opinion. 5. The question of punishment by death. Arguments against it (Ferri). It is a question to be resolved according to the conditions of criminality in a determinate country. 6. The American institution of parole as a means for the repression of antisocial activity. A supposed infiltration in the Swiss Draft Code. The problem in Italy. 7. The pecuniary punishment (*Geldstrafe*) in the Tentative Codes under examination: payments by installments: hereditary. 8. Indemnification for damage suffered by the victim of crime. The Tentative Codes aim at a deviation of the State's functions: indemnification for damage must remain a secondary object of the criminal trial. 9. The Tentative Codes of Austria, Germany and Switzerland resemble the Statue of Janus. The criminal justice of to-morrow.

1. The Draft Penal Codes of Austria, Germany and Switzerland are three weighty attempts to reform the system of criminal justice in the modern state, which have attracted the attention of all those who in civilized lands devote their thought and study to that eternal problem of human society, what is criminality? It is not only three drafts of laws under our consideration, but it is really the mental attitude of three civilized nations towards those members of the nation, who lack the self-

¹Figures in parentheses refer to notes at the end of the article.

restraint necessary for collective life. These three Tentative Codes represent our mental attitude, after the long dispute between two great schools of thought, both composed of men of great ability (viz.: the judicial and the socio-anthropological school), as to the best method of regulating our treatment of criminals.

Hence arises the great international importance attached to this admirable work of German criminalists. It is not a question of regulating matters of mere internal interest (in this case we should be thrusting ourselves uselessly into the affairs of other people), but it is a question of three legislative projects, which the other nations of the civilized world regard with great anxiety, because they feel that their own interests are also at stake. Indeed no future legislative work will be able to neglect these three Tentative German Codes, even if they should not become positive laws, and it is the obvious duty of modern students of criminal science to know their fundamental bearings. And the purpose of this article is to make known, with critical valuations, the basic tendencies of these Tentative Codes and I also propose that it shall be the completion of my Italian translation of the general dispositions of the three Tentative Codes, which is appearing in the *Giustizia Penale*. It is not boasting, but merely the truth, to say that *Giustizia Penale* is the only review of criminal law, which has rendered accessible to students, in their native tongue, an examination of the general part of these three Tentative Codes, which seems to me so indispensable for us. Because just as no human description of a natural scenery can truly represent that same natural scenery, so no subjective valuation of a product of the human intellect can represent the work itself. To make possible and easy the study of these German Tentative Codes, without the artificial barriers of any school of thought or any theories, was our object, when we assayed to give the Italian public a translation in their own language.

2. It is undeniable that these three Tentative Codes have been subject to the influence of *modern criminal politics*, which, with all the characteristic exaggerations of reacting movements and one-sided views, has been the flag ever held aloft by the Italian positive school, and above all by its never tiring apostle, Enrico Ferri, whose name is deservedly famous throughout the civilized world. And so, in duty to our country, it must be said that if Italy has not been the first to present a draft code corresponding to modern views of civilized nations confronted by the phenomenon of criminality, yet Italian criminal science is the basis of the German Drafts (1). The German criminalists have worked, in characteristic German fashion, but the materials of their arguments and

FUNDAMENTAL PROBLEMS OF CRIMINAL POLITICS

their change of psychic attitude towards the criminal are directly derived from Italian thought, which is in all countries famous for its advance in the study of the problems of criminality. We are not of the positive school, nor can we rank ourselves under the banner of Ferri, but we must nevertheless acknowledge and state that the discussions, often bitter, aroused by the positive school have served to hold high the name of Italy in the department of criminal science. So much so that to-day there is not any serious foreign student; who does not make it his duty to study the main works of our criminalists.

3. The fundamental problem is that of penal responsibility. *Who ought to be punished?* That is the great question, before which every legislator stands perplexed to-day. And the perplexity arises from the great amount of truth and reality in many of the new ideas. The classical school of criminal law settled the problem easily: it gave the description of each offense and fixed the equivalent punishment. Whoever does such and such will be punished so and so. But beyond the general motives and the logic of facts, excluding the consideration of the right to inflict punishment, this school did not look more deeply into the circumstances connected with the man to be punished. The bearing of the state in regard to its criminal citizen was an entirely *objective attitude*. This was an exceedingly convenient method for the application of the law, because it afforded a formula easy to apply, an objective rule for determining criminality.

But all study of criminal science (be it of psychological, sociological, political or technically judicial character) aims ultimately, whether directly or indirectly, at attaining one sole purpose: *the diminution of criminality*. Every man, whether working with brain or with hand, has in society a social function and he cannot have other than a social function. The function of criminologist is to co-operate in that great human ideal: the lessening of crime. To this ideal he co-operates also when, as strict jurist, he searches the juridical nature of the offenses and the institutions created by the criminal laws. He then works to the end that the law may be rightly applied. But what is the social end for which penal laws are applied? The repression of crime; and the repression of crime means making an effort to diminish it.

Of course no system will ever succeed in rooting out of men the motives that incite the antisocial act. "To conceive a society without crime is equivalent to thinking of a society of universal physiological beauty. To pretend that any doctrine or code will extirpate criminality is like expecting a second creation" (2). This is true, and no one imagines such a thing possible, but theories are like men: after a certain

length of service, one requires from them an account of the results of their work. A juridical theory cannot be permitted to exist merely because it is perfectly logical. Practical life goes beyond the logic of jurists, used to apply sometimes the microscope even upon the simplest concepts, the investigation of which is not necessary for the practical ends of life. Practical life requires a system of justice and juridical ideas applicable to its function: tending to an ever continuing diminution of social evil, and towards the increase of the collective well-being. That is what is required. Otherwise, the scientist becomes as apart from daily life as the monk (3).

Substantially for these reflections the tendency to-day is to give great importance to establishing *measures of security*. A brief glance at the German Drafts shows us how much consideration their compilers have given to this means of repressing crime,

The idea of *responsibility* remains. The positivists affirmed that society must defend itself from the criminal just as it defends itself from a lunatic or from a mad dog. This will never be. The collective conscience feels *the need of inflicting punishment* on him who by his conduct endangers the social harmony, in so far as he is responsible and capable of being guided in his conduct by juridical motives, which are for the purpose of promoting social harmony. And naturally a different course of action must be adopted in the case of the antisocial man, who is incapable of grasping juridical motives, from that adopted in the case, where the man is thus capable. And this must be so on account of an undeniable psychological phenomenon. In the case of the man who commits a crime and whose psychic nature is responsible and capable of appreciating juridical motives, popular sentiment feels that his chastisement is just. That is proved whenever a crime is publicly committed, by a man who shows himself responsible for his acts; honest men who may be present at it cannot express their desire for revenge. This feeling has become milder in modern time, but men, when a crime has been committed, desire that punishment shall be inflicted. The citizens of Rome would have lynched the man who attempted the life of Victor Emanuel III, while the honor of Italy was being maintained in Libya, if he had not been at once removed. That is the indestructible psychology of human nature. Little by little it will be possible to render the form of punishment more effective and different, but it will never be possible to abolish punishment for the man who is responsible and capable of understanding juridical motives. And this must be so because the old theory of repression by fear of punishment possesses a great amount of truth. Take away punishment, reduce the attitude of

FUNDAMENTAL PROBLEMS OF CRIMINAL POLITICS

the State towards the criminal to simple defensive measures, more or less pleasant for him who has to undergo them, and you will increase the stream of crime. The man, who, on account of his psychic structure, is capable of dreading the punishment and of abstaining from anti-social conduct for fear of incurring this punishment, cannot be simply placed in a workhouse or otherwise isolated or taken care of, but *he must feel the pain of the punishment*, as a consequence of his conduct. The idea, which Feuerbach above all put into relief, that one must seek to repress the impulse, from which the crime springs, by the menace of inflicting a pain greater than the discomfort that arises from the unsatisfied impulse, is a profound truth, which must be always borne in mind (4).

The pain to be inflicted on the culprits will be changed, but the essential idea of inflicting pain will have to survive. The European States of to-morrow will perhaps regard indiscriminate sentences favorably, which in America are giving good results and which are generally popular, though even in Transatlantic countries they have been subject to criticism. (5) Indeterminate sentences are not contrary to the idea of inflicting pain on the culprit, but they are a more rational application of the idea, from the social standpoint. It is no advantage to society to inflict pain for pain's sake, and at any cost, but it is to its interest to inflict pain when it is efficacious in suppressing the motives which urge the delinquent to the crime. But it is not possible to determine antecedently the amount of pain to be inflicted, since a greater or less amount will be necessary, according to the different psychological characters by which it has to be undergone. Just as in home life to prevent the repetition of the same fault, a hit or a severe look will be enough for one boy, whilst for another it may be necessary to make him go several days without fruits or amusements. The application of these ideas will be difficult, but the inability to find immediately the best means of their actualization cannot constitute a condemnation of them. Even in America indeterminate sentences present grave problems, but this does not make the Americans think of abolishing them.

Now, when the infliction of punishment can bring about in the criminal that state of psychic equilibrium, which results in the social harmony, it ought to be carried out. Namely, the punishment ought to be passed. "Measure of security" (*Sichende Massnahme, Sicherungsmittel*) is a conventional term, because in a strict sense also the punishment is a measure of security, in so far as it is determined and carried into effect for the ends of social security. But now it has been agreed to understand the term "measure of security" as an institution of crim-

inal law different from punishment, namely *every extraprimitive means of social defence against the crime*.

But, though punishment is in a certain sense (and only in a certain sense) a measure of security, one cannot by any means say that every measure of security is necessarily a punishment. (6) Punishment remains a well defined and clear concept: it remains *the pain*, that the judge inflicts on the delinquent for his crime. The measure of security, on the contrary, is not a pain, will not be a pain: it remains a *protective and rehabilitative measure*, which is applied (at least in the system of the three German Drafts, which have given rise to our reflections) to those types of criminals who cannot be punished because they are incapable of being made socially fit through the suffering of some penalty, or to those in whom it is thought that the desired effect would not be produced by the infliction of a penalty.

The three Drafts are animated by the central idea of repressing crime by the two great means, which criminal justice has at its disposal, that is to say, punishments and measures of security.

But what must be the criterion in applying a punishment instead of a measure of security, or a measure of security instead of a punishment? That is a question to which legislators cannot give a rule of thumb for all cases, and so the German Drafts have necessarily been obliged to enlarge *the discriminatory powers of the judge*, and to grant the criminal judge a greater sphere for liberty of action. Such reforms presuppose an intelligent magistracy and Bench of judges, endowed with special culture, otherwise it would be like giving a gun of a new model to the soldiers not instructed in its use. For the needs of the criminal law of the future *the specialization of the criminal judge* is absolutely essential. The civil judge needs more a strictly legal mind, while the criminal judge needs a learning, in which the social and psychological side has been highly developed. The complete criminologist is not merely a lawyer. And it is certain that if an extension of the judicial powers is to be feared, when there is a set of judges incapable of rightly exercising such liberty of action, the best means of attaining the desired end must be a magistracy quite prepared and fitted to fulfill their new tasks. Montesquieu wished that the sentence be *un texte precis de la loi*. (7) I believe that the less the judge's part is a mere mechanical repetition of the law, the more effective will be the execution of criminal justice.

Indeed, the legislator has regard to generalities, while the judge is confronted with actual cases. The former thinks about criminals, the latter has the criminal before himself. What ought to be done? The

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legislator cannot tell precisely, any more than we can tell precisely what we shall do, when we are in London. The legislator can only give general directions, leaving to the judge more or less liberty of action in actual cases, according to the prepared or unprepared conditions of the magistracy of his country. One must apply in this case the general argument for liberty. State officials, like other citizens, can be allowed more or less liberty of action, according to the point at which their natures have arrived.

In the German Drafts the transition from punishments to measures of security is very remarkable. Thus § 42 of the Draft German Code of 1909 provides for the placing of the criminal in a workhouse (*Arbeits-hause*), but then goes on to give power to the judge to apply punishment, if the delinquent shows himself incapable of work. Ferri has remarked that "this legislative admission is of itself sufficient to destroy the pretty castle of cards, ingeniously built up to maintain a distinction between punishments and measures of social security, which is the shadowy survival of discarded theories, not light of positive reality." To me, on the contrary, it seems clear as midday light that, if for one remedy another may be substituted, then it is connoted that the two remedies are not identical. And further their difference arises from the fact that punishment is resorted to, when measures of security have been tried in vain. This demonstrates that there is something in punishment, which has a peculiar and distinct efficacy in dealing with crime.

What is the juridical nature of measures of security? Up to a little time ago I agreed with the criminalists of the old tendency in believing that there should be provisions of administrative government, administrative acts (9); but further reflection convinces me that when, in a code, the dealing with crime is so regulated that the judge is allowed to award either punishments or measures of security, it is clear that his powers are not either jurisdictional or administrative, according to whether he sentences the criminal to punishment or to means of security. In the system of criminal justice, presented by the German Drafts, "measures of security" are undoubtedly treated as veritably and exclusively *acts of jurisdiction*.

4. The *indiscriminate length of punishments* is rightly attached to the powers, which are allowed to the judge, of substituting one sentence for another. Read, for instance, the first part of Sect. 32 of the Swiss Draft Penal Code (April, 1908): "When a person, condemned to prison (*Gefangnis*) for a crime (*Verbrechen*), has lived a dissolute life or has been unwilling to work, and his crime is attributable to these causes, if he shows himself able to work or able to acquire habits of work,

the tribunal may suspend the execution of punishment and order the criminal to be sent to a Labor House (Arbeitserziehungsanstalt), instituted exclusively for this purpose."

Thus the idea of punishment, the duration and intensity of which is proportional to the crime committed is abandoned, and the idea of indeterminate sentences remains victorious. Naturally, the task of the criminal judge is thereby made more burdensome. At present, when he has sent a man to prison, he may return home in peace and sure that he need not think any more about it, unless the man commits a new offence. No; it is now desired that the work of the criminal judge should extend beyond the mere condemnation of the criminal, and that what he does for the protection of society should be guided by the results of experience. Just as a doctor must watch the effect on the patient of the medicine he has prescribed, so the criminal judge will have to watch the effect upon the criminal of the punishment inflicted or the other remedial measures. This is also a triumph for the principle that it is the *character of the criminal*, and not the crime committed, which should determine the quality and quantity of the State's counteraction. It is a triumph of the principle which the Germans name *Gesinnungsstrafe* (punishment of the character) over the theory of *Schuldstrafe* (punishment of the crime).

Difficulties, great difficulties, in actualization there certainly are. The functions of justice are modified or even changed, and this change requires executive officers of quite different training. The new ideas are confronted with administrative machinery, which is quite unsuitable to them, and official indolence rests comfortably in an armchair stuffed with historical ideas. For this reason the discussions on these German Draft Codes have been enormous (during the last years the German reviews have been full of critical articles and many volumes have appeared in the German language on the same subject) and these new ideas have been met with determined opposition. In Germany especially there is great reluctance to accept new ideas, originating from foreign influences. Certainly every nation, conscious of a position in the world, has its pride, just as every man conscious of his position in society, and both naturally desire the personal freedom of self-government. And so it is not to be wondered at that in Germany, in an atmosphere of national pride and military discipline, the modern ideas of prevention and reformation are often mistrusted for fear that they should diminish the firm military order of national life (10).

The idea of punishment for an indeterminate period is attacked, on the ground that it is juridically absurd and politically impracticable

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(11). Objections about juridical absurdities, however, decide nothing, because social necessities, which the administration of justice has to satisfy, do not take account of want of juridical logic. No legal system, engaged in satisfying human needs, troubles itself about its want of logic! With reference to the political impracticability Manzini remarks: "All that is not politically possible, can be nothing else than a Utopia, that is, something actually unreliable in the province of law." But if this were so, how comes it that in one country in the world, in America, the institution of indeterminate sentences has been established and that America has proved to be content with it? That which is possible to one nation is no longer a Utopia, and the positive law of another nation cannot be a Utopia. And can we doubt, even for a moment, that reluctance to accept new ideas arises from early scientific education, impregnated with historical ideas?

Without repeating what I have already observed, I wish again to remark that the institution of indeterminate sentences creates a strong stimulus to self-education. George Stammer, summarizing the scientific results of his journey in America, wrote: "Among us the criminal fights until his condemnation and then he abandons himself to his fate. Here in America the more difficult fighting begins only after the condemnation. The struggle with himself, with his faults and his own weakness." (12).

5. The German Tentative Codes keep *the punishment of Death*. (Austrian Draft, § 18; German Draft 1909, § 13): only in the Swiss Draft (April 1908) does it not appear.

The question of capital punishment is a grave one. I believe that it cannot be settled by philosophers, with more or less abstract treatises on the value of human life. It is an eminently practical question, a means of repressing crime, the use of which depends on the peculiar conditions of any given nation. For me the question is not whether capital punishment is right, but only whether it is necessary in a given civilized country.

When crime is on the increase and the value of human life seems to be held in but little account, then capital punishment becomes an inevitable necessity, and also the application of it must be proportionately extended; when, on the contrary, crime is diminishing and respect for human life appears greater in a given civilized community, then the punishment of death is not necessary. This statement of mine is supported by the experience of two nations, Russia and Holland. In Russia the struggle against the revolution has proved the necessity of capital punishment and has rendered its application even more severe. Piont-

kowsky recently observed: "In such times the passions increase and the very force needed for repression causes further excesses. The moral feelings become blunted, crimes increase enormously and the value of human life seems but little respected. Then capital punishment must be considered as obviously necessary." (13). Holland, on the contrary, which formally abolished capital punishment by the law of the 17th September 1870 (in fact it had not been carried out since 1861), feels no need of re-establishing it, because statistics show that crimes have not increased since 1870).

Germany and Austria in relation to the problem of capital punishment stand very nearly in the same position as Russia. They cannot abolish it. Aschrott wrote: "I am convinced that all theoretical arguments against capital punishment will remain without efficacy, as long as the state of civilization in a nation is such that capital punishment is considered superfluous by the popular conscience even for the gravest crimes." (14). And the well-known German review *Deutsche Juristen-Zeitung* last year took a *referendum*; and through it many eminent persons, not all restricted to the legal world, declared themselves favorable to capital punishment, with powerful arguments.

Capital punishment possesses the highest intimidatory force, that is it has greatest power of diverting a man from his criminal intention. Ferri has said: "He who commits a crime, either does it in a moment of sudden passion and then he thinks of nothing; or he does it with premeditation and in the latter case he is led to commit the crime not by a hypothetical comparison of the differences between capital punishment and imprisonment for life, but by the hope of not being discovered and punished." (15). It is, however, easy to meet this argument. The idea of capital punishment, as a consequence of certain misdeeds, is an idea that forces itself slowly into the conscience and produces a deeper horror of crime in general. *Its efficacy reacts upon the crime in general, and it has not only its effect in diverting criminals from the worst forms of crime.* In the human mind mental images become confused and there remains a vague idea of the punishment of death, which produces in honest men a sense of social security, confirms wavering men in a repugnance to criminal acts, and keeps those who are most inclined to crime in the ways of honesty. That capital punishment is effective also in diverting men from other crimes, is clearly evident if one thinks, for instance, how often he who plans a robbery must take into account the possible eventuality of having to kill. Now this slowly growing unwillingness, that gradually forces itself into the mind of the

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citizen, also renders less frequent the force of sudden passion and diminishes the hopes of impunity.

In Italy the avalanche of crime has grown in such a manner that it rouses serious apprehensions. Lately Senator Mortara, in the speech at the inauguration of the legal year in Court of Cassation at Rome, mentioned our bad supremacy in this matter (16). And abroad they begin to think that in Italy studies of criminal law are so honored, because crime is also very much honored here. Certainly, studies of penal law and criminality are two things in relation, and it is probable that criminal science is more cultivated where crime is strongest. It is also certain that in the day, in which there will be no more criminals, criminal science would perish, just as medicine will perish on the day when there are no longer any sick men. At any rate the question of capital punishment in Italy is pressing and it is necessary to begin to think about it seriously, instead of considering it as a mere trifle of criminal politics, about which rivers of ink can be written pro and con, without the dispassionate observer being convinced of any thing. In Italy, as Manzini has well remarked (17), the abolition of capital punishment has been a homage rendered by the Italian government towards the cultivated classes of the nation. And I believe that the fear of the greatest possible penalty would be pre-eminently effectual with the people of South Italy, who are endowed with a particularly emotional character.

6. One of the best known American systems of combating anti-social inclinations is the "parole system," that is the promise of good social behavior on parole. Thus in America there is the release on parole, that is the conditional liberation of the prisoner on his parole. One must not believe that this institution is received in America with general enthusiasm. Also beyond the Atlantic, where it is in operation, it has met with severe censures. However, the general results are good and in this also the problem, as in the case of indeterminate sentences, is a problem which depends on how it can best be effectuated. Above all are necessary parole agents (agents entrusted with the surveillance) quite capable of fulfilling their task. And the institution has been also applied as a penal substitute. That is the "Pollard system." Pollard is a judge of the municipal police in St. Louis, who has attained admirable results in the repression of alcoholism by the system of promise on parole.

The promise of good social behavior on parole has not been inserted in the system of measures of security of the German Drafts. We have merely wished to speak of this American institution apropos of the repressive and preventive system of the tentative codes under examina-

tion. Bauer has said that the Swiss Draft Code of April 1908 presents the first example of legislation in continental Europe, which takes into consideration the Pollard system in so far, in the case of conditional remission of punishment, as it authorizes the judge, who subjects the condemned to a special surveillance, to impose on him the duty of abstaining from alcoholic drinks (Swiss Draft Code, Sect. 61, n. 2) (18). We are sorry for the opinion of Bauer, who has written a monograph on this subject, but in the section of the Swiss Draft Code, to which he refers, there is really no idea of the institution of promise on parole on the part of the culprit. There is an ordinary duty imposed by the judge, and the culprit has no active part in assuming it.

All the same might the system of promise of good social behavior on parole be accepted by the legislation of a State of continental Europe? To speak with more authority, let us remain in Italy and make a comparison with the American environment, on the basis of what has been told us and what we have read. The American *character* is a quite peculiar thing, very different from the Italian. From Anglo-American education is produced a different man, who generally possesses a cleaner conscience of social duties and in whom is strongly imbued the sense of responsibility. The Italian character (we will say with all frankness and with the objectiveness, which is proper in scientific investigations) is often weaker, and that not only by the social class, where crime is most prevalent. The environment also, it is true, has great influence on character. In America there is a greater activity and greater opportunity of working than in Italy, so that the activity and the requirements of that activity, in the world surrounding the individual, constitutes a strong agent in co-operating to the maintenance of promise on parole.

However, the fundamental cause, which would oppose the adoption of the parole system as a means for the prevention and repression of criminality in Italy, is the inherent difference of character. Secondly would come the considerations of environment. Indeed, certain flowers attract our admiration in the flora of a country, but, brought elsewhere, they are incapable of living. Also in legislative matters a blind honor must not be paid to foreign institutions, but one has always to keep in view the peculiar conditions of a given country. *There is a universal problem of criminal justice, but a criminal justice alike for all peoples is impossible.* Different languages would first have to be suppressed and Esperanto spoken everywhere!

7. The regulation of pecuniary punishment (*Geldstrafe*) in the system of primitive means of the German Drafts also attracts our attention.

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Pecuniary punishment is the criminal sanction, that most nearly approaches to civil sanctions. It is a loss in money, imposed by the State on the criminal.

By the Penal Code, actually in force in Italy (Art. 19) "in the case of payment not executed within two months from the day of intimation of the order, and of the insolvency of the condemned, the fine (*multa*) (19) is converted into detention, a day being equal to ten francs and to a fraction of ten francs of the sum not paid." The same criteria are applied to the *ammenda*, that is, the pecuniary punishment established for contraventions. (In the Italian Penal Code the offences are divided into two fundamental classes: *delitti* and *contravvenzioni*).

It is evident that the unfortunate, who within two months from the intimation of the order has not the money to satisfy his penal duty to the state, has to be imprisoned. That is a condition of inequality in punishment, and a proof of positive law that the law is not equal for all, as is written up in the judiciary halls. Economic inferiority makes the poor man confront his punishment also with less security. The German Tentative Codes try to remedy these inconveniences, above all by the institution of *payments by installments* (Tentative Austrian Code § 27; German, § 31, Swiss, Sect. 36). This is an excellent institution and worthy of being warmly recommended. However, the regulation of these payments by installments is different in the three Drafts Codes. The question is relating to the highest term to be allowed for the extinction of the fine. The German Draft Code allows a year, the Austrian three months, after the sentence is made irrevocable; on the contrary the Swiss Draft Code does not establish a final term for the payments by installments, but gives power to the judge to fix the time for payments, according to the conditions of the condemned (*nach den Verhältnissen des Verurteilten*). If one is inclined to rigid legislative determinations (that are like abstract numbers, when they are mechanically applied to life), the German and Austrian system is preferable; if one thinks that the judge ought to realize and value the individuality of each case and not reduce all his activities to a mere formalism, the Swiss system is preferable.

The German Draft (§ 35) and the Swiss Draft (Sect. 36, n. 5) decree clearly the impossibility of recovering the pecuniary punishment from the succession. On the contrary, the Austrian Draft says (§ 28, alinea 2): "If the condemned has died, after the sentence has been made irrevocable, the same pecuniary punishment is to be recovered from his estate, that would have been received from the criminal himself." But to make pecuniary punishment hereditary cannot be ap-

proved. It is true that the punishment in money much resembles the sanction of civil injury, but nevertheless it always is different in that it is a *punishment* and a consequence of penal wrong-doing. Now modern law cannot approve an infliction of punishment, the consequences of which are visited upon the heirs of the criminal. That would be to return to the harshness of primitive times, and punishment now, in all its forms, must firmly maintain the character of *strict personality* in its application. That is, the punishment must be solely expiable by the culprit.

It should, however, be remembered that even in Germany § 30 of the Penal Code actually in force states: "The pecuniary punishment may be executed upon heirs only when the sentence has become irrevocable while the condemned lived." By § 35 the German Draft aims to abolish this portion of the actual law.

8. Another grave problem, to which the German Drafts call our attention, relates to *the reparation of the damage* resulting from the crime.

Crime causes social and private damage. Of the social damage the State takes account, either by inflicting punishment on the wrong-doer, or by taking against him other defensive measures. Of the private damage the individual citizen takes account, demanding economic reparation. The economic reparation satisfies the immediate needs of the victim of criminal undertaking; the punishment or prophylactic provisions satisfy the immediate needs of the social organism. Society does not see in crime a want of economic balance, but diminished security in the conditions of life.

Now, if the modern legislator must preoccupy himself more than in the past with the victim of crime, taking into account the programme of criminal politics of the sociological school, it will be necessary to proceed with great caution, to avoid excesses and misdirection of the State's functions. *A firm balance must be maintained between the reductions of new ideas on the one hand and the exigencies of practical juridical life.* Criminal justice is wholly animated and permeated by a criterion of public law, and cannot therefore be made accountable for means for the defence of private rights. Modern criminal politics must, certainly, more than formerly insure reparation to the passive subject of crime and must endeavor to suppress the delays of a new suit in the civil courts, but, always holding in view the idea that criminal legislation and justice cannot look to particular or private needs or advantages. In short the question of damage—reparation to the victim of crime—cannot remain other than *an accessory end* of the criminal process, which as a principal

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end seeks to defend against the *social* damage, caused by the criminal undertaking.

Ferri put forward the theory that the State which charges taxes for its services, the principal among which is the service of public safety, ought to intervene to secure reparation for private damage caused by criminal acts, save to recovering it from the delinquent, as grantee of the rights of the injured party (20). The Swiss Draft has undergone, for instance, the influence of these ideas, which in Sect. 39, on the disposal of the fines (*Bussen*) and the amounts recovered from confiscated goods, provides thus: "If it is foreseen that the criminal cannot make good the damage caused by the crime (the Swiss Tentative Code distinguishes two fundamental kinds of offence: *Verbrechen* and *Uebertretungen*, that is, as in the Italian Code, crimes and contraventions), the judge may allow to the injured party, in whole or part, either the amount of the fine paid or the sum recovered from goods confiscated. If the tribunal condemns the criminal to a long imprisonment, it may allow to the injured person a part of the prisoner's money earned."

This is only one particular aspect of current modern ideas which desires to enlarge the functions of the State, and to reduce the citizen to a puppet, in all circumstances of his life aided always by the protective mantle of His Majesty the State.

And the German Draft to § 57 provides: "When damage to the injured person arises from the criminal act and this damage is to be recovered by civil law, the tribunal, at the instance of the injured party, must decree, in addition to the punishment, reparation of the injury, when it does not surpass twenty thousand marks and it is possible to ascertain it without delay of the penal process." This proposed innovation does not arouse in us much enthusiasm. To-day, more than ever before, the necessity of specialization of penal judge must be insisted on, because he, from the nature of his function, has to come more in contact with the politic-social currents of life, and therefore needs a *forma mentis* different from that of the civil judge, who ought to be solidly and exclusively educated in the technicalities of the law. And even now a jury is entrusted with the decision in affairs of civil law, whilst most reasonably the powers of a popular jury must be confined to deciding on the facts, in which legal elements do not preponderate. And can one doubt that this very easy method of bringing, without any expense, an action for damages would lead to an infinity of trifling claims, often without foundation in facts?

And so we ought to try to improve the methods and operations of

the criminal judges, but we must also be careful to leave to the civil judge his proper functions.

9. These reflections on criminal politics, to which the German Drafts have given rise, cannot be extended further in a review article. We have only wished to dwell upon some fundamental points. To write a complete comparative criticism of the system of criminal politics, proposed by the three Tentative Codes, would require a volume, and that of no little size, even if the study were limited only to the general subject. However, it is not necessary to give excessive weight to these legislations *in fieri*, very much *in fieri*, especially as far as foreign countries are concerned. They doubtless mark a characteristic moment of the mind of man in its struggle with crime, but in substance they are an attempt to actualize the ideas, that during the last few years have always been the subject of much discussion.

Someone has likened these legislative efforts to the statue of Janus, which has two faces which look at the same time one towards the past and the other towards the future (21). Such a comparison would perhaps seem to make a little ridiculous the so-called "eclecticism" of the Tentative Codes of Australia, Germany and Switzerland. However, we believe that any dispassionate investigator must be deeply convinced that the edifice of criminal justice of the future will not be able to do without many elements of the past. Opposite doctrines, from the nature of things, are one-sided, and therefore criminal justice cannot be represented by any of them (22), but, always intent on attaining in the best way the ends of social defence, she must draw from opposite doctrines and from fruitful discussion what best conduces to such an end. She is like an indifferent spectator, who has no enthusiasms, but coldly counts her own gains, when everybody has spoken in defence of his own programme.

(1) Cf. Robert Ferrari, *Criminal Law for Men*; reprinted from vol. 18, n. 12, "Case and Comment."

(2) Stoppato, *La scuola giuridica Italiana e il progresso del diritto criminale*, Bologna 1908, p. 17.

(3) "Nous ne sommes plus au tems où les jurisconsultes, séquestrés de ea vie ambiante et enfermés entre le quatre murs de leur cabinet d étude, fe livraient à des méditations approfondies sur le umul et sur la cause productrice des délits, on bien s'appliquaient é creuser certains problèmes de la procédure concernant le système d'accusation ou de conditions de la legalite, etc. Les savants des temps jadis croyaient leur tâche bien remplie quand ils avaient posé un principe nouveau ou introduit une modification plus ou moins importante dans les details de la procédure." Eugène De Balogh, *La crise du droit pénal*, Revue de Hongrie, April 1912, p. 247).

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- (4) Feuerbach, *Lehrbuch*, §§ 8-20; *Revision der Grundsätze und Grundbegriffe des positiven peinlichen Rechts*, vol. I, ch. I.
- (5) Interesting the recent article of Albert H. Hall, *Indeterminate Sentence and Release on Parole*, *Journal of Criminal Law and Criminology*, II, p. 832 seq.
- (6) Thus, on the contrary, Ferri, *Il congresso internazionale di antropologia criminale a Colonia*.—*Scuola Positiva*, XXII, p. 13.
- (7) Montesquieu, *Esprit des lois*, livre XI, ch. 6.
- (8) Ferri, *Giustizia penale e giustizia sociale*.—*Scuola Positiva*, XXI, p. 30.
- (9) So, for instance, recently Ugo Conti, *Diritto penale e suoi limiti naturali*, Cagliari 1911, p. 10 and *passim*.
- (10) Cfr. Hartmann, *Reform of the criminal law in Germany*.—*Journal of Criminal Law and Criminology*, II, p. 352.
- (11) Manzini, *Erattato di diritto penale Italiano*, III, p. 37.
- (12) Stammer, *Ergebnisse meiner Amerikafahrt*—*Blätter für Gefängnis-kunde*, vol. 44, p. 780 seq.. In Italy the institution of indeterminate sentence is defended by a prominent representative of the juridical school, Professor Stopato (of the University of Bologna), who, however, desires to force it by any means into the category of historical ideas, going so far as to say that the proportions between punishment and crime are not broken thereby.
- (13) Piontkowsky, *Die Todesstrafe in Russland*.—*Leitschrift für die gesamte Strafrechtswissenschaft*, XXXIII, p. 70 seq.
- (14) Aschrott, *Strafen Sichernde Massnahmen. Schadenseratz*.—*Reform des Reichsstrafgesetzbuchs* (Aschrott und von Liszt), Berlin 1910, vol. I, p. 71 seq.
- (15) Ferri, *Sociologia criminale*, n. 92.
- (16) See *L'amministrazione della giustizia penale nel discorso inaugurale del Senatore Mortara*.—*Giustizia Penale*, XVII, vol. 324; and also Sommer, *Die Kriminalität in Italien*.—*Monatschrift für Kriminalpsychologie und Strafrechtsreform*, IX, p. 53 seq.
- (17) Manzini, *Politico criminale*, etc., *Rivista Penale* 1911, No. 1. Manzini is also favorable to flogging (*fustigarione*). In our Penal Code in force in Eritrea this special punishment has been accepted, but only to maintain a *local tradition*. Every nation has the penal treatment that it deserves, and in the colonies, by suddenly instigating the punitive system, some surprising results might supervene. However, the Italian mind revolts against flogging, because it is repugnant to its feelings as a civilized nation, and is considered inadequate to attain the desired end of repression of crime, inasmuch as it lacks, when a punishment by the state, that which ought to be its principal characteristic, as a punishment, application immediately following the offence. I refer the students interested in this question to two recent and important writings: Kuhn Kelly, *Ist Körperliche Züchtigung opportun? Eine Frage und ein Notschrei*. (The author wishes to re-establish corporal punishment for the infamous crimes arising from brutality), and Feder, *Die Prugelstrafe*, Berlin 1911. (The author is against the punishment of flogging).
- (18) Otto Bauer, *Das Pollard-System und seine Einführung in Deutschland*, Reutlingen 1911.

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(19) *Multa* is the pecuniary punishment applied to the *delitti*.

(20) Ferri, *Sociologia criminale*, n. 88.

(21) Hartmann, art. quoted, loc. cit., p. 353.

(22) Balogh remarks: "Quelle sera, parmi les écoles qui se disputent actuellement la préséance, celle qui l'emportera et qui arrivera ainsi à imprimer à la réforme in preparation son propre cachet, c'est une question oiseuse et qui importe bien peu au fond l'essentiel c'est que la transformation qui va avoir lieu serve à faire avancer la grande cause de l'humanité et qu'elle corresponde, mieux que ne le fait l'état actuel, aux exigences du progrès et de la justice." (Art. quoted, loc. cit., p. 260.) This author, who in his interesting article gives a sufficiently exact picture of criminal science at the present moment, shows himself skeptical as to the efficacy of theoretical discussions (p. 246, 260), whilst indeed no one can deny that the progress which our science is actually making is due chiefly to the beneficial struggles between various schools.

THE RESPONSIBILITY OF CHILDREN IN THE JUVENILE COURT.

HENRY H. GODDARD.

Director Department of Research, Training School, Vineland, N. J.

A great step forward in dealing with some of our most troublesome social problems was taken when it was realized that children are not responsible to the same extent as adults and that the very atmosphere of the room in which adult offenders are tried is inimical to childhood and that a separate room and a separate time should be set aside for the juvenile offender, and it is desirable also to have a special judge for juvenile cases. It was no surprise to anyone who had followed the movement when the recent International Prison Congress highly endorsed the Juvenile Court. Thoughtful people now recognize that the movement has only begun and that we must take many more steps in order to make this work thoroughly efficient.

For more than a quarter of a century we have been realizing increasingly that child study is of great assistance to pedagogy. But the teacher's need of a knowledge of the child is no greater, indeed one might say, never so great, as the need of the judge, because the teacher deals with all children and the majority of children are fairly easily handled because they are fairly alike and much like the teacher herself when she was a child. But the judge in the Juvenile Court deals with those extremes of childhood which do not come under the rule of the average and especially with those children, the like of which he himself never was and perhaps has never even seen outside the court room. One cannot sit in the Juvenile Court a half day either as judge or visitor without realizing the tremendous responsibility upon him who has to decide the cases, has to deal with each according to the responsibility of the offender; who must, if the child is thoroughly developed and normal for his age, treat him with that kind severity which shall show him the error of his ways and give him the inspiration to better conduct. If, on the other hand, it is evident that the child is not responsible even to the extent of his physical age, but is dull or stupid or what we call feeble-minded, then he must not be treated as his normal brother is treated but rather, being irresponsible, and more, being in a mental condition which can never be wholly repaired, it is not sufficient simply to reprimand him. It is not sufficient simply to mete out to him some penalty for his offence,

assuming that he will understand the penalty and, acting accordingly, avoid such offence in the future. It must be recognized that this type of child can never connect cause and effect, can never see the relation between the punishment that he received and the misdemeanor that he committed and consequently is not to be reformed by the same method that is applied to the normal boy; but rather it is well known that such children will always be children and must be cared for throughout their lives. Consequently if such a child is sent to the reformatory or the prison for a few days or a term of weeks, it is by no means a solution of the difficulty, but, as is known, is very often a radically wrong procedure. This, we say, is well known. It has become commonplace and no judge who sits on the bench would deny it.

Now then, we are driven to this further question. How shall the judge decide these cases? And here we come to a point that needs careful study. In the past, the decision has been largely made on the basis of the appearance of the child as he stands before the bar of justice and the majority of legal men to-day consider that they can recognize a mentally defective child by his appearance and that if he appears normal, they are safe in treating him as such. But this view is being seriously questioned by careful students of defective children and it is worth while to look into the matter a little and see first what are the probabilities in the case. Let us see where an *a priori* argument will lead us in this matter.

Although it is hard for many people to accept it, nevertheless it is surely a conservative estimate that 2% of school children are mentally defective or feeble-minded. This is not the place to go into the psychology of feeble-mindedness or to discuss extensively the characteristics of such an individual. But a few general principles may be stated in order to have them clearly in mind in the course of our argument.

First, the feeble-minded child is incurable. He may be trained if in wise care, but he will never be anything but feeble-minded. A feeble-minded person has been defined as one who is incapable of managing his own affairs with ordinary prudence.

The feeble-minded person then cannot take care of himself. He is full of instincts and impulses. He is lacking in control. This combination makes it absolutely certain that he will do a great many things which are annoying and troublesome to the rest of society, or, in other words, those things which are called offences for which he must be punished, or at least from the doing of which, he must somehow be restrained.

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Now of this 2% of children who are bound by their very nature to do things for which they must be called to an account, a certain percentage, as yet undetermined, will be restrained by their own family. The parents will watch over these children and guard them, will protect them, will train them and bring them up as well as they can in the way they should go. At least, they will keep their own children from coming into the hands of the law. But it is safe to conclude that all of these children who have not the parental care will necessarily be taken care of by those who guard the welfare of the public at large. We have said that all of this 2% are liable to do those things that make them obnoxious to those about them and for which they must therefore be restrained. While this is true (that they are liable to do those things) the matter of temperament comes in to a very large extent and were it not for the fact that many of these children are of a temperament which leads them rather to quietness and indolence, the record of juvenile crime would be enormously greater than it is. But it does happen that many of these children are thus saved from entering into crime because their mental defect leads them rather to indolence. One wishes that we could have the exact figures on these matters in order that the argument might approximate more closely to mathematical precision. But since we have them not, we must make as shrewd and reasonable guesses as we can and the argument will be the same.

The whole point of this part of my paper is to show that we have every reason to expect that a relatively large percentage of these defective children will fall into crime or into offences which will bring them before the Juvenile Courts. There are 404,546 children in the public schools of Manhattan and the Bronx. (Report of Supt. of Schools, 1911, p. 29.) Two per cent of this number would give us 8090 feeble-minded children.

There were in round numbers 10,000 children in the Juvenile Courts of Manhattan and the Bronx last year. If this includes every feeble-minded child in these boroughs, we have the fact before us that 80% of the children in the Juvenile Courts are feeble-minded. This is, of course, a truly gratuitous assumption and contrary to reason, for one knows, as already indicated in this paper, that not all feeble-minded children get into the court for the reasons mentioned. On the other hand, not all children that commit offences get into the court whether normal or feeble-minded. To what extent these would offset each other no one of course knows. We have, however, a bit of exact data which is interesting in this connection.

Through the kind offices of a philanthropic woman in the city of

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Newark, the children that come before the Juvenile Court have been tested in this particular. One hundred cases chosen entirely at random with no possible selection except that their cases were sufficiently serious to warrant their detention in the detention home have been examined as to their mentality. The results are startling. These children had been brought in for the various misdemeanors common in Juvenile Courts, most commonly of course, stealing, immoral acts, incorrigibility, etc. The most surprising is that the ninety-seventh child tested was normal and the only one in the whole group. The following shows the result in tabular form:

TABLE I—BACKWARD CHILDREN.

Chron. age.	Number cases.	Years back.	Av. mental age.
10	1	0	10
10	1	1 year	9 ¹
9½ Av.	4	1½ "	8
11 "	9	2 "	9
11 5/6 "	6	2½ "	9 ²
12 2/3 "	7	3 "	9 ³
13½ "	6	3½ "	10
Total	34 cases	= 34%	9 1/3

This makes thirty-four that are less than four years backward. This would be the extreme limit for possible responsibility and normality. These children three and a half years backward may possibly still be normal and able to make up their backwardness and become useful citizens, although this is very doubtful, and certainly some of them will not do this. Beyond this four-year point, however, there is no possibility that these children can ever be normal, nor can they be considered entirely responsible. From similar tests of feeble-minded children we find results as indicated in Table II:

*Exponent means that of the five questions necessary to advance the child another year he is credited with the number indicated.

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TABLE II—FEEBLE-MINDED CHILDREN.

Chron. age.	Number cases.	Years back.	Av. mental age.
14 1/12	26	4 yrs.	10
14	6	4 1/2 "	9 ² *
14.9	10	5 "	9 ⁴
14 1/2	4	5 1/2 "	9
16 1/20	11	6 "	10
15 5/7	7	6 1/2 "	9 ²
15 1/2	1	7 1/2 "	7 ⁴
17	1	8 "	8 ²
Total	66=66%		9.2

Average age of the 100 children, 13 3/4 years.

Thus we have 66% of these children who are distinctly feeble-minded. The older children are the most backward, the average for each group being as follows:

TABLE III.

	Chron. age.		Chron. age.
Normal	10	4 1/2 years back	14
1 year back	10	5 " "	14 9/10
1 1/2 " "	9 1/2	5 1/2 " "	14 1/2
2 " "	11	6 " "	16 1/11
2 1/2 " "	11 5/6	6 1/2 " "	15 5/7
3 " "	12 2/3	7 1/2 " "	15 1/2
3 1/2 " "	13 1/2	8 " "	17
4 " "	14 1/12		

Table III shows that even the younger children who are perhaps two or three years backward, may be already arrested in their development and when they are two or three years older physically, will be not much if any, older mentally, so that whereas they are recorded as three years backward now, they may be five years backward later on; in other words, they are no more responsible than the 14 9/10-year-old who is mentally five years behind his chronological age.

The following are some of the cases:

IMMORAL.

Mabel B.

16 years old physically.

10 years old mentally.

Taken by her mother from a laundry where she and another girl had been spending the night with two Chinamen.

*For the significance of the exponent see the preceding foot note.

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Mother living with a man to whom she is not married.

Nina N.

15½ years old physically.

9^s years old mentally.

History—Father an alcoholic, degenerate; mother a prostitute; eldest sister a prostitute; sister and brother had gonorrhea.

This girl absolutely incorrigible, steals, associates with commonest type of men, even yelling to them from House of Detention, absolutely immoral. Cannot associate her acts with punishment. Is a well developed girl, of unusual beauty.

Marjory J.

15 years of age physically.

11² years of age mentally.

Taken by her brother from house of ill fame in New York, where she and another girl of the same age had been spending two weeks. Was in the public schools until she ran away. She is an accomplished prostitute.

STEALING.

Louis M.

14 years old physically.

9 years old mentally.

Placed on probation for stealing at 12 years of age. Two weeks later stole \$14 from his sister—ran away. Was finally brought home—sent to the State Home for Boys. Three months after his release, he was charged with the crime of burglary and has been sent back.

Isabelle K.

15 years old physically.

10² years old mentally.

Answered an advertisement as a nurse girl. The woman who employed her was a widow with a child of four to be looked after during the day, as the woman was obliged to work for her living.

The girl reported to her older sister and a friend of the same age (where they lived away from their home in a furnished room) that she was alone with the boy all day. So the following morning, the three girls came to the house and with three suit cases carried away all the jewelry, underwear, clothes, etc., that the woman had and "what do you think," the girl said in the House of Detention, "we got to give them things back."

MENTALLY SLOW IN CRISES.

James P.

11 years old physically.

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8 years old mentally.

With crowd of boys who set fire to hay stack. All the boys escaped being caught but James. Said he was only watching the fire and did not know why the other boys ran.

Tony A.

15 years old physically.

9² years old mentally.

Playing craps with six other boys; only boy caught—said “didn’t know why the other fellows ran—thought they were running to a fire.” Boy was arrested by officer on beat.

Frank C.

16 years old physically.

9³ years old mentally.

Never taught to obey. Incurrigible—constantly breaking probation. Cannot hold position long—is lazy. After failing to report for six weeks at Probation Office, Probation Officer saw the boy driving a horse and carriage. The Officer called to the boy. Upon seeing the Officer, the boy jumped from the wagon and ran down the street, the chase creates a commotion and the boy was caught. Had the boy stayed in the wagon and driven away, he would not have been caught.

It is safe to say that these children have been in the past entirely misunderstood both by their parents and their teachers and the criminal authorities. This is the material out of which we make our adult criminals, since there is no other course open to them. Unless conditions in this city are vastly different from those elsewhere, we may reasonably take this as a sample of what is to be expected in other cities, the conclusion from which is that one of the first things that we ought to do is to make a careful study of the children that come before the Juvenile Court, sorting them according to their mental capacity and consequent responsibility and treating them in accordance with their mental condition rather than their physical age or size.

One’s attention cannot but be arrested by the fact that the number of feeble-minded children in Manhattan and Bronx is 80% of the number of children passing through the Juvenile Courts in one year and that by actual test, 66% of the children in the Juvenile Courts of Newark are feeble-minded. We do not mean, of course, that this later finding corroborates the estimate or confirms the suggestion that 80% of the Juvenile Court children are feeble-minded. But it must at least make us stop and think and ask ourselves the question—is it possible that a much larger percentage of the children in Juvenile Courts than we have ever believed are feeble-minded? Let us for the sake of argu-

ment admit the possibility. The next question that comes before us is, how could such a thing be true without our recognizing the condition? That leads to another story.

It is a well-known psychological truth that one's apperception, one's expectation determines to a very high degree what he will see, and we all know that sometimes startling things pass in front of our very eyes and we do not see them because we were looking for something else. Now, we would suggest in this connection that we have all been oblivious to certain things in childhood because we have been taught to look for something else. In other words, is it not true that in our dealing with childhood we are bound by an unfortunate dogma, viz.: that the child is naturally bad? We have had this preached to us many times and backed up by the interpretations of Holy Writ, so that it is impossible for a child to do anything that displeases us without our thinking almost inevitably that he does it out of pure wickedness. He *could* have done it differently and had he not been inherently wicked, he would have done differently, but since he did the bad thing, it was because he intended to. The father or mother usually knows that their child did not intend to be bad, but all other children come under the rule.

Whether we subscribe to this doctrine when it is thus formally put up to us or not, is it true that we are very largely victims of this delusion and that we are inclined perhaps almost thoughtlessly to ascribe the wrong things to that same inherent wickedness? If such is the case, then we may readily conclude that we have not seen any mental defect in these children simply because we have been accounting for their actions in another way. We have not only not been looking for mental defect, but we have not been having our eyes open to see it when it was before us, because we have been looking for wickedness.

But this is not all. We are the victims of a mistaken notion in another direction. Feeble-mindedness has meant to us almost invariably a condition of mind which is so marked and manifests itself so vigorously that it shows in the countenance, it shows in the physical makeup and indeed is so very apparent that no one can possibly escape it. It is the idiot, the imbecile, the poor, unfortunate malformed, driveling, drooling object which we all look upon with horror. Consequently, whenever we look upon a child who has a fair countenance and regular features, a well-developed body, who is more or less alert, who can talk fairly well, we at once rule out the possibilities of mental defect and say that he surely is normal and responsible for his deeds. Now this is a fatal fallacy. It can be proved by statistics that a very large percentage of the children in our institutions for the feeble-minded, children whom

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the experience of months and years has demonstrated are hopelessly feeble-minded are nevertheless fair to look upon, fair of face, well developed physically, having every outward appearance of a normal mind. In other words, a very large percentage of feeble-mindedness does not show itself by any physical marks. This complicates our problem in another way. Not having recognized these children as feeble-minded, but rather considering them normal, placing them in the normal group, we have thereby lowered our standard of that group, and we have come to make the normal group include a great many children who do those things that are troublesome and annoying, who cannot do the things that we really know they ought to do and so we are the victims of a vicious circle. These children are normal. They do these undesirable things, therefore, normal children do these things. Therefore, children that do these things shall be normal. So much for the a priori argument.

We are thus able to see that it is to be expected that we have underestimated the number of defectives. It is entirely possible that our courts might be full of defective children and almost nothing else and yet we have missed the whole point because we are the victims of this unfortunate dogma and this unfortunate point of view.

Now let us turn, as well as we may, to the facts of the case as they have been determined by students of the problem. Unfortunately here we are largely lacking again in those statistics which would demonstrate to us the actual conditions existing among the children of these classes. But there are many straws which point the way the tide is going. We are coming to recognize that a large percentage of adult criminals, probably at least as high as 25%, are feeble-minded and have become criminals because they were feeble-minded and unable to do right.

We are coming to discover that the children whom we have placed in the Reformatories and afterwards let out on probation, even under the most favorable conditions of environment of home or friendly people who look after them, are unable to reform; are "unable to manage their own affairs with ordinary prudence."

And lastly, we are beginning to get certain methods of testing the mentality of children and these methods are showing us beyond a doubt that a large percentage of these children whom we are discussing, are mentally defective. The Binet Test or Measuring Scale of Intelligence may not be the final word on this matter, may not be perfect, and yet it has amply been demonstrated that there is a vast amount of value in this scale, and that it is able to give us a remarkably close estimate of the mentality of the child. Wherever this test has been applied to this class of

children, it has been invariably shown that a very high percentage of them are mentally defective.

The examination of one hundred admissions of boys at the Rahway Reformatory in New Jersey, gives upon the most conservative estimate, after throwing out all that are by any possibility doubtful, 25% of these children as feeble-minded. A similar examination of the girls in the Girls' Reformatory has given similar figures. Examinations made in the Massachusetts Reformatory for boys corroborates this in every particular.

A recent testing of girls on probation after they had come out from the Girls' Reformatory in Massachusetts showed that out of fifty-six thus tested, only four were not feeble-minded. (For a brief review of this examination, the reader is referred to the *Training School* for June 1911). Still more confirmatory perhaps is the account already given of the findings in Newark.

Here we have then a series of studies into this problem, all of which confirm the main proposition and agree with our a priori conclusion, that a very large percentage of the children that get into the Juvenile Courts are mentally deficient. They come before the court because they have impulses which they, because of their defective mind, are unable to control. They do those things, they know not why, but they cannot help it.

We would digress at this point to note a fact which is brought out in the table above given, which, while not important for the present argument, may yet prove interesting to students of this subject. The reader will notice upon looking over the average mental age of the hundred children tested at Newark (see tables I and II), that the average is about 9 years and this is not an average from wide extremes. There are none over eleven and only a few at that age, with two or three possibly of seven. All the rest are eight, nine or ten. We refer to the individual ages, the average for each group as is seen is about nine, while the average mental age for the entire hundred is 9½ years. The writer has reported elsewhere (See the *Bulletin de la Commission Penitentiaire Internationale*, Sixieme XIII, Livraison 1910, p. 37) that of twenty-five children in the Vineland Training School who are reported as having criminal tendencies, fifteen tested nine, five tested ten. This certainly points to the fact that there is a peculiar period in the child's life at about nine years of age. What the explanation of this may be is a question.

We have suggested that the impulses which lead the child into activities that result in misdemeanors ripen at about the age of nine, and that his power of control has not yet developed, so that if his arrest of development occurs at that time, the conditions are most favorable for

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his being a criminal. If his arrest in development comes earlier than that, he is not criminally inclined because his impulses thereto have not shown themselves. On the other hand, if his arrest comes later than that, he may not be a criminal because he has enough power of control to restrain himself. It may be that some day we shall know the reason why so many children break down at the age of nine.

To resume our argument. Suppose we take the very lowest figure that any of these studies suggests, namely 25%, and see for a moment where it leads us. Twenty-five per cent of the children who come before the Juvenile Court are feeble-minded. The figures cannot be less than that. Is not the mere suspicion that such is the case, sufficient warranty for us to proceed to a careful examination of this matter? Must we go on assuming as we do that all but a very small percentage of these children are normal and responsible and are fit subjects for reformatories and prisons?

On the other hand, is it not wise and humane and just and the only wise, humane and just thing for us to appoint experts who may make the examinations and determine for every child that comes before the court just what his mental condition is so that the court may dispose of the case wisely and justly? If this is the thing that ought to be done, how negligent are we in those courts where absolutely nothing is done and how far short do we fall from the ideal in those courts where only the second offenders are taken.

Is it not a curious kind of logic which says in substance to a child who has committed an offence, the chances are one in four that you are feeble-minded and couldn't help it but I will let you commit another crime and then I will examine you and find out.

In conclusion then; there seems to be every reason to believe that the matter stands thus: Twenty-five per cent at least of the children who come before our Juvenile Courts are feeble-minded. Therefore, it is incumbent upon every person who is interested in the work of children to insist that every child who comes before the court shall be tested—by the Binet test until something better is evolved—and if he proves to be feeble-minded, he shall be provided for in an institution where he can be made happy and useful and cared for throughout life, rather than be sent to the reformatory for a few years or to a detention school for a few weeks and then be let out to commit misdemeanors again because he has no power of doing otherwise.

THE TREATMENT OF CRIME—PAST, PRESENT AND FUTURE.

WARREN F. SPALDING, SECRETARY MASSACHUSETTS PRISON ASSOCIATION.

The older methods of dealing with crime were based upon false assumptions in relation to offenders. The legislature prohibited certain acts. Some of these were wrong in themselves; some of them had no moral quality, but were forbidden in the interests of the public. The legislature dealt with crime, not with criminals; with offences, not with offenders. It had in mind a burglary, a larceny, an assault, etc.—abstract things. Having forbidden these, it became necessary to prescribe penalties for violating the laws. It did not inflict the punishment. It said what should or might be inflicted, and created courts to apply the laws.

In devising penalties, lawmakers dealt, again, with abstractions. They aimed to "make the punishment fit the crime"—not to make it fit the criminal. The average legislator knows little about the criminal. He shares the feeling of the average citizen that the criminal is a man of great physical power, whose liberty is a menace to the safety of others; that he is liable, at any time to attack peaceable citizens who will not allow him to do as he pleases; that he delights in violence, almost for its own sake; is shrewd, calculating, plotting the injury of his fellow-men, and captured with great difficulty—a public enemy who, at all hazards, must be fought and overcome. The fact is that there are very few men of this type. The ordinary criminal is likely to be found lacking in physique, in physical vitality, in will, in initiative, in power to make plans, either against others or for his own protection. Even if not below normal in brain power, he is deficient in self-control, in sense of proportion and in balance, and he does not appreciate the relation between causes and effects. Legislation based upon these misconceptions regarding the criminal is sure to be full of absurdities and of errors, as it is.

SOME FALSE ASSUMPTIONS.

The old assumption was that there was but one thing to be done when a law was broken—the lawbreaker must be punished. It was assumed that two things would follow: (1) The man who was punished would not repeat his crime; (2) others, seeing the punishment, would be deterred from committing crime. These assumptions were based upon theories, not upon facts. They seem reasonable, but the

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criminal does not think and act as other men do. Court records and prison records prove that there are people who do not learn by experience. They repeat their offences, over and over again, once, twice, a dozen times. Punishment does not deter them from crime. The average criminal has two defects which prevent his learning by experience. He lacks foresight. He lives in the present. He lacks imagination. He is sure he shall escape detection. This is not due to optimism, but to his incapacity to imagine what the policeman will be doing. These defects account in large measure for the failure of punitive measures to deter from crime.

But it is said that punishment of the criminal deters others. Perhaps it does to some extent, but its value is overestimated.

It was assumed also that a judge could tell what punishment should be imposed upon an offender—that he could “make the punishment fit the crime.” Perhaps he could, if crime were in his view an abstraction, as it is to the lawmaker. But it is an embodied, concrete thing, called a criminal. The judge must inflict the pain of punishment upon him. How much? It was comparatively easy to answer when the *lex talionis* governed. “An eye for an eye.” It was a very inexact sort of justice, for a sensitive man might suffer a hundred times as much as his victim suffered from the loss of an eye or a tooth.

But when the state undertook a system of commutation, the difficulties became innumerable. How many months of imprisonment should be required? He must “pay” the penalty. The phrase suggests commercial valuations. There is no scientific basis for the imposition of penalties. No two judges agree; no judge agrees with himself. Ask him what he wants to see accomplished; how he expects imprisonment will accomplish it; whether he knows what happened in each of the last ten cases in which he took the same action? As a rule he will have no satisfactory answer. He should not be blamed. He has done the best he could.

The old system considered only one act of the criminal, instead of making character the basis of punishment. True, there was some inquiry as to previous offences, and a habitual offender might receive a severer sentence than that of a beginner; but it was true also that many a recidivist was punished less severely the second time than the first, because his second offence happened to be, technically, less serious.

THE MODERN SYSTEM.

The modern system, as far as it has become a system, is based upon propositions fundamentally different from those underlying the

old ones. It does not accept the proposition that a man who has committed a crime is thereby put into a class by himself, separate and apart from those who have never broken the laws. The assumption that all men who commit crimes are criminals at heart, is unfounded. There is no "criminal class," composed wholly of bad people. There are classes of criminals, but that is a different matter. Law-abiding citizens become lawbreakers; lawbreakers become law-keepers. Each criminal is an individual, and should be treated as such. His one criminal act may or may not show his real character. He may be far better or far worse than his worst deed. Character and not conduct is the only sound basis of treatment.

Fundamental in the new scheme is classification; individualism. In the old system the main question was, What did he *do*? The main question should be, What *is* he? There can be no intelligent treatment until more is known than the fact that a man did a certain thing. It is as important to know why he did it. Diagnosis is as necessary in the treatment of badness as it is in the treatment of illness.

The recognition of the fact that many who commit crime are not criminals at heart, and that many who are criminals at heart may "cease to do evil and learn to do well," marks the distinction between the old methods and the new. The aim of the latter is to provide for the discovery of the reformable, and for their reformation. It was found that criminals may be divided into two classes—those who would reform (themselves) and those who must *be* reformed. To make reformation, instead of punishment, the main purpose in dealing with offenders was novel, almost revolutionary. There are many who still believe that punishment is essential to reformation.

THE FIRST STEP IN CLASSIFICATION.

If arrested offenders are to be classified, some one must provide the information which will enable the court to decide to what class an offender belongs. Hence the necessity for a probation officer. His first duty is to obtain information. The policeman proves what the prisoner did; the probation officer must find out why he did it, what he really is and needs, and whether he is or is not likely to reform without punishment. If he is, he might be set free by the court; but it is unwise. The average probationer needs supervision. He must be made to realize that though at liberty, he is not free, and that if he relapses he will certainly be surrendered and punished. But he needs more than this. Ordinarily, men of this class are weak; they need counsel, and the support of one who is stronger; they need friendly care. To give this is one of the probation officer's functions. His duty is to watch over the probationer, rather than to watch him.

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One of the principal duties of the Massachusetts probation officer is to sift those arrested for drunkenness. The work is done carefully. The officer does not depend merely upon his memory. Every "drunk" case is a matter of record. The arrested person makes a written statement, giving his name, and address, setting forth what persons, if any, are dependent upon him for support, his place of employment, if any, and whether he has been arrested previously for drunkenness within the past twelve months, and requesting to be released. The probation officer investigates the record. If he believes that the prisoner has given his true name and address, has not twice been arrested for drunkenness during the preceding twelve months, and will appear upon a summons, if wanted, he may direct the officer in charge of the station to release him.

The advantage of the proceeding cannot be overestimated. In many cases drunkenness is unintentional. The arrest is in the interest of public order, and frequently is for the protection of the arrested person.

When he is sober, the probation officer, before releasing him, tells him that a record has been made, which will be used against him next time, and warns him of consequences. There is a fair chance of saving him, if he is a beginner. One great advantage is that he is spared public exposure in court, and saved from a record of conviction. Also, he is able to return to his work in the forenoon. It is of especial value on Sundays and holidays. In Massachusetts 37,746 were released in this way last year.

In some cases the probation officer cannot complete his investigation before the court opens, or is in doubt as to the expediency of an early release, or of any release. (His power to direct a release is discretionary.) In such cases the prisoner is sent to the court. He is questioned by the court in the dock, before the complaint against him is read, before he is asked to plead. The probation officer's record is before him, and the probation officer gives what information he has. The court, in its discretion, may release the prisoner without arraignment, sparing him the stigma of a conviction. Twenty-six thousand and fifty-eight were so released in Massachusetts last year.

HABITUAL INEBRIATES.

It will be seen that these proceedings result in sifting those who are arrested for drunkenness. Most of those who are held for trial have records. For those who have, the law makes severe action possible. Formerly there was a cumulative-sentence statute, with heavier penalties where there had been previous convictions. But the courts held that it was necessary to allege and prove those convictions. This

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was so difficult that the power was rarely used. Many years ago a law was passed giving the courts power to sentence any man or woman to imprisonment for a year for drunkenness, even for a first offence. It was believed that they could be trusted to use this enormous power wisely, and that trust has not been abused. It is not necessary to use records of previous convictions in the trial, as the complaint contains no allegation of such convictions. On the question of sentence, however, anything which will enable the court to act wisely may be put in.

Several results have followed the use of this system. Perhaps the most important is that "drunk" cases are tried as thoroughly as other cases. A second result is that the policeman's conception of his duties and of his relations to the court have changed. Formerly his main thought was to convict his prisoner, and to secure his punishment, especially if he had had a tussle with him. He has come to see that his duty is done when he has given his testimony. The disposition of the case is a matter for the court.

Again, the new method affects arrests. When a policeman knew that an arrest meant that he must spend two or three hours in court, he was reluctant to make it. There was the same reluctance when he realized that his prisoner might be sent to prison for the non-payment of a fine. Now, knowing that the occasional offender will be released, he takes him into custody, for the benefit of the public and of the individual.

NON-SUPPORT; RESTITUTION AND REPARATION.

The probation system has revolutionized the treatment of men arrested for non-support also. Formerly, a man arrested for not supporting his family was sent to prison, making it impossible for him to do what he was punished for not doing. Now he is put into the custody of the probation officer, required to work and to pay his money to his family, or to the probation officer for their support. In Massachusetts last year, probation officers collected more than \$45,000 in non-support cases.

Under the old system, if a person injured another, or damaged his property, or stole from him, he was punished by the court, sometimes by a fine, sometimes by imprisonment. If a fine was paid, it increased the public revenue. The person who was injured bore all his own losses, and the public profited by every offence. Under the new system, the wrong-doer may be required to make reparation or restitution, being released on probation and paying to the probation officer, in installments if necessary. This has the great advantage of securing for the injured person what belongs to him; of compelling the injurer to do what he should do, and, most important of all, it teaches

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property rights. Last year, more than \$10,000 reparation and restitution money was collected by Massachusetts probation officers.

Probation is especially valuable in the prevention of imprisonment for the non-payment of fines. Imprisonment of private debtors by private creditors was abolished many years ago, but the state still coerces its creditors in that way. It is unnecessary, expensive and ineffective. The probation officer is a better collector than the jailer can be. If the person fined is put under the supervision of the probation officer, he can keep his work, earn money and pay the fine. Last year the probation officers of Massachusetts courts collected nearly \$28,000 in this way.

THE SECOND STEP—REFORMATORY TREATMENT.

Probation, in its various operations, is the first step in classification. It keeps from prison those who appear likely to reform (themselves) without imprisonment. Next, in order, come those who must *be* reformed. Imprisonment of itself will not reform them, but it makes possible the application of reformatory treatment. Modern reformatories aim to do for their inmates what was left undone in their earlier life. Crime is the result of definite causes, ascertainable and removable. Their removal requires time, and therefore a long term. There must be an appeal to the man, to the best there is in him. If he knows that he is to be released on a certain day, fixed beforehand by the court, there is little inducement to reform. He will be content to endure. The indeterminate sentence, with its appeal to the love of liberty, is a large factor in securing the results. The reformatory system emphasizes the future, not the past.

The ordinary prison has but one message—"You are a very bad man." The walls say it; the presence of armed guards says it, even if they do not say it in words; the grated door of his cell, strong enough to detain a wild beast, says it. There is no suggestion that he ought to be better; no help to become better. He will go back to the world just as quickly as the law allows, without reforming. The reformatory says, not, "*You are* bad," but, "*You were* bad; you are going to be better," and it gives all the help which reasonably can be expected.

The most serious handicap of the reformatory is to be found in its buildings. They are an inheritance. There was a time when it was supposed that the criminal (every criminal) was a dangerous animal, to be restrained by force. The strong masonry cell, with its heavy bars, was built upon that supposition. It may have been necessary, because there was no classification of prisoners. The buildings were made to fit the very worst men. Reformatory buildings

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were constructed upon the same plan. They contradict all that the reformatory itself is saying. The inmate is told, when he enters, that the administration has confidence in him and great expectations for him and of him; that he must win his way; that he will have his liberty when he has shown that he deserves it. He works hard; disciplines himself; wins promotion; but everywhere, to the last day of his confinement, the buildings are telling a different story; the walls, the gratings, tell him that he is not trusted. The psychological effect is injurious. Some day some one will build reformatory buildings which are consistent with the purpose and scheme of the institution. The physical restraints in the upper grades will be greatly reduced, for if a prisoner cannot be trusted out of a cell in the weeks immediately preceding release, he is not fit for liberty.

PENITENTIARY PUNISHMENT.

But reformatories deal with only a small percentage of the criminals. The penitentiaries deal with another small percentage. Great progress has been made in their administration. Their most serious evils grow out of the ancient theories respecting criminals. Legislatures, with no special qualification for such work, say that certain offences shall be punishable by imprisonment in the state prison. These offences are all "felonies"; the men who commit them are "felons." Felons and felonies are not all alike, yet only one place is provided for their punishment. In it are gathered men of all kinds. There are brutal men; dangerous men; habitual criminals; professional criminals; vile, debased men, and men who are of low grade, mentally and morally. With these, in the closest contact, are put men who, though they have committed serious crimes, are not criminals at heart. Intellectually they are capable; morally they are decent; but because they have committed "felonies" they must be confined in a penitentiary, in the most intimate association with men whose very presence is contaminating. One of the worst results of the unclassified penitentiary is that its administration and discipline must be adapted to the worst men.

THE GREAT PROBLEM—MISDEMEANCY.

But penitentiaries and reformatories, together, deal with only a few of the criminals. The problem of the felon is a simple one, compared with the problem of misdemeanant. Misdemeanants outnumber the felons many times, but receive little attention, except from the police. The county prisons are filled with an ever-shifting population, for whose reclamation and restoration nothing is done. What can be done? First, classify the misdemeanants. The drunkards should be

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put by themselves. They should not be treated as criminals, or with criminals. They need light, air, sunshine, hard work in the open, and much longer sentences than they would receive on the penal basis. Other misdemeanants should be classified on the basis of character, and then their needs supplied. Prominent among these is education. This should not be confined to illiterates. It has been proved that intellectual improvement is attended by moral improvement. The warden of the Massachusetts state prison says that no man who has learned to read and write in his prison has returned. Yet, in most county prisons, the minds of prisoners are ignored. Many misdemeanants have no skill. Those who are capable of acquiring it, and whose terms are long enough, should receive instruction in the use of their hands, partly to increase their earning capacity; partly to give them new impulses and ambitions.

Prisons for petty offenders should be in the country. A considerable portion of the inmates will not need cellular confinement. Large farm colonies must supplant "prisons" for misdemeanants. In those colonies the reformation and restoration of inmates must have the first place.

CARE OF PRISONERS' FAMILIES.

The reasonable treatment of prisoners will provide for the relief of their families. The defect of most plans is that they are based, to some extent, upon the idea that the family of a prisoner should have a share of his "earnings." But this makes the family dependent upon conditions which he cannot control. The prisoner has nothing to say about his own employment, and few prisoners earn even their own support. The claim of the family of the prisoner; the obligation upon the public to aid in its support, to the extent, at least, of preventing suffering, rests upon a different basis. The state has taken the wage-earner from his family for its own purposes. The prisoner's dependents are innocent. The state feeds, clothes, houses the guilty husband and father. Why should it not aid the innocent dependents?

Recent workmen's compensation acts compel the employer to assume a part or the whole cost of accidents, even though he did not cause them, directly or indirectly. It is made a part of the cost of production, and so is distributed among consumers. Application of the same principle would distribute the burden now falling upon prisoners' families. The cost of supporting a prisoner during his imprisonment being incidental to the protection of the community, is borne by the taxpayers. The distress of the family is incidental to the protection of the community also, and the cost of its relief should be borne in the same way.

NEGRO CRIME AND STRONG DRINK.

BOOKER T. WASHINGTON.

Principal Tuskegee Normal and Industrial Institute.

In the agitation of the liquor question incident to the attempt to pass prohibition laws in Georgia, Alabama and other Southern States a great deal was said about the relation of strong drink to crime, particularly crime among Negroes. This is a very important subject because from two-thirds to three-fourths of the prisoners in the penitentiaries, jails and chain gangs in the South are Negroes.

During the past year I have attempted to find out definitely what relation liquor sustained to crime among my people; that is, how much of a contributing cause liquor was to their crime rate. One reason why I became especially interested in this inquiry was that the sheriff of Macon County, Alabama, the county in which Tuskegee Institute is located, told me that since prohibition had gone into effect in the county that crime had been reduced from sixty to seventy per cent. I have always tried to keep in touch with the officers of the law in my state and have frequently had occasion to ask their opinion concerning the needs of my people. After conversing with the sheriff I determined to look further into the relation of crime and liquor among the people of my race.

In order to learn if other counties in Alabama had had an experience similar to that of Macon County I sent out a circular letter to the sheriffs of various counties in Alabama and to the chiefs of police and recorders of courts of the more important cities of the state.* In this letter the following questions were asked:

What in your opinion are the chief causes of Negro crime?

What effect does strong drink have in making the Negro a criminal?

Since the prohibition law has gone into effect has there been any decrease in the crimes committed by Negroes in your County, especially rape, murder and other serious offenses?

The sheriffs of fourteen counties, chiefs of police of the four principal cities of the state and the recorders of the police courts of Montgomery and Selma sent answers. The replies of the city magistrates concern the urban; the views of the sheriffs the rural Negro.

*Since the material for this article was gathered several counties in Alabama under the revised liquor law have gone back to saloons.

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I will consider first what was given as the chief causes of Negro crime.

The chief of police of Mobile was of the opinion "that the chief cause of crime among the Negroes was a lack of necessary education and the excessive use of alcohol combined with the drug habit (cocaine)."

The sheriff of Mobile County in which the City of Mobile is located wrote that "The chief causes of arrests here are principally gambling and vagrancy."

The recorder of the police court of Selma wrote: "In my judgment intoxicating drinks are now and have for years been at the bottom of all the crimes of a grave nature committed by both Negroes and whites."

The recorder of the police court of Montgomery said: "In regard to your question as to the chief causes of Negro crime I am not prepared to enter into a lengthy discussion, but the impression I have gained from my experience in the court leads me to believe that the two chief causes, especially for misdemeanors, are drink and jealousy with its attendant passions."

The sheriff of Madison County in which Huntsville, a city of 10,000 inhabitants is located, wrote: "I will say that whiskey and gambling are the chief causes of crime among the Negroes. A great many misdemeanors are caused by strong drink."

The sheriff of Jefferson County in which Birmingham, the chief city of the state is located, wrote: "I can say without hesitation and the records in the criminal court will bear me out that more crimes are committed by the Negro race on account of strong drink than all other vices combined. Eighty per cent of the colored men confined in the County jail are there for crimes caused either directly or indirectly, by whiskey."

The sheriffs of the rural counties are also of the opinion that strong drink is the chief cause of crime among the Negroes. The sheriff of Randolph County wrote: "Strong drink tends to make the Negro vicious and to have less regard for themselves and for the laws of the country." The sheriffs of Autauga and Elmore Counties said that whiskey and women were the chief causes of crime among the Negroes. The sheriff of Walker County was of the opinion that "ignorance and whiskey are the chief causes of crime." He added: "Combined they make a brute of any man." The sheriff of Jackson County said: "I am of the opinion that whiskey is the chief cause of the majority of crimes committed by Negroes in this county." "We all understand," said the sheriff of Conecuh County, "that whiskey and crime go hand in hand."

The Biennial Report of the Attorney General of the State of Alabama for the years 1908-1909 gives further interesting information con-

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cerning crime. Under the heading "Relation of Intoxicating Liquors to Homicide" this report said:

"I am including a statement here showing, for the present period, the number of homicide cases disposed of in a number of the counties and the number of cases in which the evidence showed that the defendant or deceased had been drunk or drinking at the time of the killing. This statement deals with about 40 per cent of the total homicides reported for the period and with about 25 counties of the State.

"For the purpose of making this report, I addressed letters to all solicitors of the State during the past few months, requesting this information. Most of the solicitors of City and County Courts and several of the Circuit Solicitors furnished the data.

"This statement shows 236 homicide cases, of which 142 of the defendants were Negroes and 94 were whites. In 97 of the cases the defendant or the deceased was drunk or drinking at the time of the homicide. The percentage of liquor homicides in the several counties included in the statement ranges from 20 per cent to 83 per cent. It also shows that 60 per cent of the defendants were Negroes and 40 per cent were whites; that the general percentage of liquor homicides was 41 and non-liquor homicides 59.

"In my previous report, 1906-08, on this subject which included reports from 45 counties and embraced only nine months of the 24 months, during which the general prohibition laws were in effect, 368 homicide cases were recorded, showing Negro percentage 67.8 and liquor homicide percentage 53; non-liquor homicide percentage 47.

"Applying the liquor percentage thus obtained, to the total homicides for the period it appears that intoxicating liquor caused, or contributed to, the killing of 258 men in Alabama for the two years ending September 30, 1910, and in 372 homicide cases during the same period, there was no evidence of any intoxicating drink. That is, according to these statistics for the two years, 129 men were killed annually as the result of liquor and 186 men were killed annually without such influence.

"For the previous period, 1906-08, when the liquor percentage was 53, the annual liquor homicides were 174 and the annual non-liquor homicides were 154.

"One solicitor in reporting statistics on this subject, says: 'You will observe there has been nothing like as many homicides in this county since prohibition. We have far too many now, but conditions have been greatly improved within the last year or two. There had been no homicide in this county up to the 1st of October of this year, hence the grand jury which convened 19th Sept., was able to report there was no homicide for

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their investigation committed in our county during this year. The grand jury for the Spring term was able to make a similar report. However, the grand jury in order to influence enforcement of the prohibition law took a recess after three weeks' work and adjourned to reconvene or return to work November 21st, instant. Most all the homicides I have tried—and the same may be said of assaults with intent to murder—have been influenced by liquor.' The experience of several other prosecuting officers of the State is given to the same effect."

It might be said, however, that strong drink and crime are accompaniments of each other and may not in reality have a direct influence one upon the other. For that reason I have attempted to study the effects of prohibition. An examination of the effects of prohibition upon the crime rate of Negroes gives us information bearing upon this point. As in the foregoing I will give the facts as reported by the officials. I take up first the cities and the counties in which the larger cities are located.

The recorder of the police court of Montgomery reported that although the number of arrests for drunkenness had increased from 1922 for the year 1908-09 to 2175 for the year 1909-10 the total arrests had decreased from 5766 to 5430; also the arrests of Negroes had decreased from 3908 to 3444. "Speaking from recollection," said the recorder, "I would say that the number of Negroes charged with being drunk since prohibition has increased by possibly 20 per cent and the number of petty crimes largely traceable to drink has increased by 40 per cent. I have noticed particularly that in the last year a great number of Negroes who have been tried by me charged with minor offences testify that the last recollection they had was of taking a few drinks and that they had no recollection whatever of subsequent events until they awoke in the city prison. This is, I am quite sure, traceable or due to the inferior grade of liquor sold under prohibition."

The city of Montgomery contains about 40,000 inhabitants, about 19,500 of whom are whites and 20,500 Negroes. There are in Montgomery County in which the city of Montgomery is located 26,000 whites and 57,000 Negroes.

The recorder of the police court of Selma reported that since prohibition has gone into effect there has been little opportunity to observe the effect of prohibition upon Negro crime for "in spite of our efforts to enforce this law by making many arrests and imposing large fines and in many cases hard labor, whiskey and all kinds of intoxicating beverages have been easily had in Selma and vicinity. In most cases in the police court, where drunkenness was charged I have been informed on inquiry as to where the liquor was obtained that it was obtained from a Negro.

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This is not always true where it is asserted; but it is a known fact that whisky is very generally "boot-legged" by Negroes, probably in many instances for others. In town there has been little opportunity to make a test of the effect of prohibition. I will add that I have been informed by reliable people that during the first period of prohibition in the country districts the absence of whiskey had a most salutary influence. Men worked more and provided better for their families. It soon became known to the Negroes, however, that their liquor orders could be filled quickly in Pensacola, Florida, and other places, and I am told that they now get what they want in that way. This keeping of liquors at home by the country Negroes and their drinking at home accounts for the large decrease in drunkenness on the public roads."

The chief of police of Selma wrote: "I think that there is not much difference in the amount of crime committed by the colored race since prohibition in this state was established. I think a certain class of women use less whiskey; for formerly they were in the habit of lounging or hanging around the barrooms and sending in these places for beer and whiskey. I think that the situation is now possibly worse than formerly. More of the men were engaged in selling, taking large chances for the amount of gain to be derived from the sale."

Selma is a town of 14,000 inhabitants, 6,000 whites and 8,000 Negroes. In Dallas County in which Selma is located there are about 10,000 whites and 44,000 Negroes.

The chief of police of Mobile reported that so far as he had been able to observe prohibition had not materially affected the crime rate among the Negroes. He said: "Prohibition has little effect in decreasing crime. The Negro is still able to obtain any manner of intoxicants; liquor in large quantities being dispensed; a bottle being now purchased in place of the customary drink, probably followed by another or more than could be obtained in the legitimate barroom. And I may add that an inferior blend of liquor has been substituted; for the majority of alcoholic cases coming under observation of the police department have been bereft of all reason and are classed as "drunk and down." This condition I attribute to the quantity and quality obtained from the average blind tiger. I do not state that alcoholism is on the increase among the Negroes, but I do say that the number who fall by the wayside in a drunken stupor appears to be greater than the usual tipsy fellow who staggers along the thoroughfare. The drug habit (cocaine) is in my opinion a greater evil among the Negroes than the whiskey habit, notwithstanding as a rule it is invariably a combination of both. While there

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is no increase of crime among the Negroes the situation is apparently unchanged since the institution and operation of the prohibition law."

The sheriff of Mobile County said: "In our county the Negroes are very temperate. Very few cases of drunkenness are reported and in proportion to the population consisting of all other nationalities it is my opinion that less drunkenness occurs amongst the Negroes than amongst the others. The prohibition law has had a good effect upon them." Mobile City has a population of 51,500, of whom about 25,000 are whites and 20,000 are Negroes. The County of Mobile has a population of 80,000, about 46,000 of whom are whites and 34,000 Negroes.

The sheriff of Madison County, in which as above mentioned the city of Huntsville is located, said that "Since the prohibition law went into effect crime has decreased among your race wonderfully in this county, especially felony. There has not been a case of assault to rape by a colored man on a white woman in this county for four years. There is now but one colored man in jail charged with a felony." Madison County has a population of 47,000, about 20,000 of whom are Negroes.

Let us now turn from these inconclusive facts to what the strictly rural counties have to show. The sheriff of Autauga County, in which there are about 9,000 whites and 11,000 Negroes, reported that crime has increased "from one-third to at least one-fourth. Prohibition has made the Negroes worse in my county. They now send off and get large quantities of whiskey and we have blind tigers all over the county. When we had places where they could go and buy whiskey lawfully these places were policed."

The sheriff of Walker County reported that since prohibition had gone into effect there was very little if any difference in the crime rate among the Negroes. This county contains about 30,000 whites and 7,000 Negroes.

The sheriff of Elmore County, in which there are 15,000 whites and 13,000 Negroes, said: "If the prohibition law were enforced, Negro crime would be reduced."

In Randolph County, which contains 19,000 whites and 6,000 Negroes, according to the sheriff, the effects on Negro crime have been as follows: "It seems that in the policed places it has done some good in checking dissipation, but outside of the policed places the Negro and those of other races who are so inclined to disobey the law have almost absolute control of the liquor traffic and if there is any improvement among them I fail to see it; that is among the classes I have mentioned."

In Bullock County, where there are about 26,000 Negroes and 4,000 whites, the conditions, according to the sheriff, were worse than before

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prohibition went into effect. The chief cause, however, according to his letter was that the law was not enforced.

The sheriff of Jackson County reported that "Crimes of all nature have decreased materially in this section since the prohibition law has gone into effect, and I feel satisfied that the prohibition law has had more to do with, than anything else, the decrease of crime among the colored race." Jackson County has a population of about 29,000 whites and 4,000 Negroes.

The sheriff of Blount County, in which there are about 20,000 whites and 1,100 Negroes, wrote that "The Negro race in this county is above the average. We have no criminals here. We have not had a Negro criminal in jail in 18 months. I do not think that prohibition has decreased crime here, for we do not have any to decrease."

The sheriff of Bibb County sent a very interesting letter in which he said: "This county has been under local option for the past twenty-five years and the law for the sale of whiskey has been rigidly enforced. For that reason, therefore, no relative deduction could be drawn by me as to the increase or decrease of crime on that account. Your race in this county is far above the average in honesty and integrity and as a rule live in perfect harmony with the whites." Bibb County contains 15,000 whites and 7,700 Negroes.

The sheriff of Conecuh County, which contains 11,000 whites and 10,000 Negroes, said that "We have had prohibition in this county twenty-six years, and it has been in operation too long for me to give you an intelligent answer as to its effect on crime here. We all understand that whiskey and crime go hand in hand whether it is sold legally or otherwise. There have been but two cases of rape by a colored man on a white woman in the history of this county—the first in 1859 and the second in 1866. In both cases the offenders were legally executed."

Although the data presented above is inconclusive, yet when all the facts are considered, strong drink, I believe, is one of the chief causes of Negro crime in the South. It appears that where prohibition has really prohibited the Negroes from securing liquor their crime rate has been decreased. On the other hand, it appears that where the prohibition law did not prevent the Negroes from securing whiskey there has been no decrease in the crime rate, in fact the introduction of a cheaper grade of liquor has apparently had a tendency to increase the crime rate. In every instance, however, where the prohibition law has been rigidly enforced and the Negroes have been unable to get liquor, there has been a decrease in the crime rate.

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This is the case in Macon County, Alabama, where I live. In this county there are about 22,000 Negroes and 4,000 whites. The sheriff of my county recently reported that he had only one deputy and did not have enough work to keep him busy. Sentiment has a great deal to do with the enforcement of the prohibition law and indirectly with the increase or decrease of the crime rate. In my own county there is a healthy sentiment both among the whites and the Negroes in favor of prohibition. There is published in the county a Negro farm paper, the influence of which has been very helpful in aiding the prohibition effort. Another thing that has helped has been the attitude of the Negro ministers. All the Negro ministers in the county are organized into an undenominational association. This association has given its support to the enforcement of the prohibition law and has even gone so far as to organize a Law and Order League to work in co-operation with the officers of the law. Although this League as such has not accomplished much, yet the moral effect on the people of the county has been very salutary.

A further proof that prohibition when enforced does cause a decrease in crime is shown by the reports that came from Atlanta, Georgia, and Birmingham, Alabama. During the first two months that prohibition was in effect in those cities there was a remarkable decrease in crime. At the end of the first month in Birmingham Judge N. B. Feagin reported to the mayor that "the decrease in arrests averaged about as follows: In comparing January, 1908, under prohibition, with January, 1907, with saloons, aggregate arrests decrease 33 1-3; for assault with intent to murder 22 per cent; gambling 17 per cent; drunkenness, 80 per cent; disorderly conduct, 35 per cent; grand larceny, 33 per cent; vagrancy, 40 per cent; wife beating, 70 per cent."

The Birmingham News, in commenting upon the first effects of prohibition said: "For ten years Birmingham has not enjoyed so orderly a period as it has since the 1st of January (1908). The moral improvement of the city has been marked since prohibition went into effect. The newspapers are no longer giving space to shootings, murders and cutting scrapes, personal altercations and other disorders as they formerly did for the reason that the regard for law and order in this community is very much more in evidence since the removal of the whiskey traffic.

In Atlanta there was a more extraordinary decrease in crime than in Birmingham. During the month of January, 1907, 1,653 cases were put on the docket of the recorder's court. During the month of January, 1908, there were but 768 cases on the docket, a decrease of considerably more than 50 per cent. During January, 1907, there were 341 cases of

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drunkenness tried, but in 1908 only 64, a decrease of more than 80 per cent.

A further confirmation of the fact that prohibition tends to reduce crime is shown by the statement of Chief Justice Watler Clarke of the State of North Carolina, who says that since prohibition has gone into effect in the state the general crime rate has been reduced 50 per cent. Murder in the first degree has decreased 32 per cent; burglary, 20 per cent; attacks with deadly weapons, 30 per cent; larceny, 40 per cent; manslaughter, 35 per cent; murder in the second degree, 21 per cent; minor crimes from 25 to 55 per cent. Justice Clarke, I understand, has prepared a five years' comparison which shows that some crimes have decreased more than 60 per cent since the saloons have been abolished. According to his report in five years there had been only two lynchings in the state of North Carolina and none in the last two years.

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Bail Commissioner, Boston.

The Chump Copper.—The civil service commission has turned the raw recruit of a "chump copper" upon the defenceless community. He has left behind him the express wagon, or street car as the case may be and he yearns for the day to come when his name will be a household word like William J. Burns and Allan Pinkerton. On his first night's duty the older policeman shows him the different streets and alley-ways and he learns the lazy gait which is a familiar sight to all city people. The veteran policeman simply points out the road to the recruit, and allows him to guess the rest. The chump copper is never trained with the veteran but obtains a certain degree of efficiency at the expense of the public. The ordinary policeman is not any better behaved than the average army or navy recruit and has more license and less restraint than either of these classes. The army and navy recruit has no discretion but must obey any and all orders of his superior officers. A policeman in cases of emergency must use his own discretion and it is a dangerous thing to entrust some people with a power that they might abuse. He can walk the streets until the close of duty and report to his superior officer that the buildings are still standing. He must appear "wise" whether he is or not. He can get put wise by the "nervers" at cheap dances and the hop and cocaine fiends who can be found at all hours of the night frequenting "quick lunch rooms." The "fly" bartender gives him just enough information to enable him to get everything all mixed up; the waitress at the ten cent lunch counter tips off straight and crooked people to him without taking any pains to discriminate between the good and the bad. The inquisitive janitor keeps him informed as to the habits and characteristics of lodgers who keep late hours; the street car conductor acts as a bureau of information and thereby keeps his hand in as he is already an aspirant for a position on the police force. But to be able to catch a thief no one will tell him because nobody knows. There is only one way to learn to catch a criminal and that is through experience. He learns to his cost in the police business that it is not what you know yourself that counts; it is what your superior officer thinks you know. This is the age of bluff and he concludes that he will play the game and perhaps become a suc-

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cessful bluffer and obtain promotion on the strength of "looking wise" and thereby earn the golden lace which will make him look all the prettier to the citizens when he goes out on special detail.

Police Trials.—The police commissioner has such a difficult time in making his official family behave that he has little time to give to the interests of the public. The police want private trials for their own misdeeds but public trials for their victims. Transfers are often made not for efficiency but for the good of the service. This vague phrase "good of the service" covers a multitude of sins. We realize that in police affairs it would not do to take the public into their confidence but the calendar of undetected crime in our large cities is appalling. The taxpayers have no way of finding out how much of their money is wasted; we have no means of finding out the blunders of police, the scandals that are hushed up, and the guilty who are allowed to escape through inefficient police duty. The calendar of police trials in the City of New York is as formidable as any court calendar; police are no better than the rest of the human family and they have as many, if not more failings than the average citizen. They still make love to the night waitresses at the all night lunch rooms; they get under cover from the cold on winter nights and they get busy whenever occasion demands to fool the near sighted sergeant. When they get old they are made keepers of detention rooms and they sit in a chair and smoke a pipe all day long. They are necessary evils; we cannot get along without them but we could easily get along with less of them and the public would get some relief. The physician's blunders are covered by the marble slab and newly made mound; the "chump copper's" blunders consists in the cells where innocent men make the lot of prison officials almost unbearable because a guiltless man always chafes under prison restraint. The public will some day arise in righteous wrath and demand from the police an intelligent account of their stewardship; they are tired of reading police reports which contain fulsome flattery of themselves and doubtful statements of the substantial decrease of crime. Police trials should be conducted in courts of justice; the judge would "play no favorites" and the unfit guardian of the public safety would get his walking ticket in short order. When a policeman commits an offence he can shield himself on the ground that he is the sole support of his wife and little family; if he considered for one moment how many men he has torn from their little families he would become a more conscientious guardian of the safety of the community.

The School for the Raw Recruit.—The average policeman is not inclined toward literature; he barely reads the newspapers and at the end of his day's work he contents himself with whatever gossip he may hear

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at the station house. He chafes under the name "chump copper;" a chump he really is and in his own heart he knows it. If the officer in charge of the station sends him to look anyone up he will ring over twenty door bells in his search for the fugitive and will succeed only in spreading the "hue and cry." When he gets through his search the whole town knows who is wanted. The sidewalk is his desk and the street is his college. He must get the rough edges smoothed down or he will never obtain any promotion or recognition from his superiors. The police brickbat must be polished and the private school will do it if there is any fertile soil. He must learn how to spread himself in court and tell the judge that the thief he arrested is a professional. The culprit may be a tramp waiter out of a job, but the half asleep judge on the bench learns to swallow this "police sophistry" hook, line, sinker and all. He must ask for "high bail" and tell the judge that the man arrested is a pickpocket with an international reputation; the man in fact could not pick a squash out of a barrel or put his hand in the "subway." He can wander down town and look over the gallery and ask the officer in charge to explain to him about "finger prints." The average policeman can as easily understand "finger prints" as a page of Sanskrit. The hotel porter puts him wise to the "pool sharks;" the pool room keeper stands in and tips off his own customers; the cab-driver for past favors tells him all about his passengers of the night before; the firemen tell all they know and much that they don't know. When he gets to court he thinks it is a personal reflection if he loses his case; he loves to call in the reporter on every trifling case and make good copy for the newspapers. When the police commissioner forgets to send his name down for examination for promotion he thinks that the wrong man was appointed director of the public safety. At last he becomes "wise," finds out the address of the school wherein the "chump copper" can receive a police education, and becomes enrolled as a student. For a stipulated price he can receive "police capsules" and if he shows a fair amount of ability "the golden chevrons are in sight" and the coveted goal is near attainment.

Misuse of Police Power.—The legal scythe swings with heartless regularity; here we have a hospital of contagious moral leprosy; the judge is the surgeon and the police are the knives. This moral cancer like the physical one is incurable because the cure is worse than the disease. Inertia seems to be the rule rather than the exception in the conduct of civil cases. The bane of criminal jurisprudence to-day is the use of police and legal machinery for the collection of bad debts. The principal offenders in this respect are installment houses, cheap jewelry concerns, and clothing on credit establishments. The clothing which they sell to

poor people is of the cheap, flashy variety which loses its shape after the first rain shower. The jewelry they sell is "Irish slum" (cheap jewelry that turns green) and the young man who makes his girl a Christmas present of this stuff loses her in short order. The watches and clocks bought on the installment plan stop going the moment the purchaser gets behind in his payments. When any one of these cheap articles is pawned these installment dealers immediately rush to the court and procure a warrant against the unfortunate customer. The man arrested is then bailed out, and restitution is made and the installment dealer gets his pound of flesh after using the police and legal machinery to collect his bill and makes no compensation to the county. The judges are very lax in their duty when they allow justice to be thus commercialized and the county treasury placed at the disposal of this class of financial vampires. Thus the police against their will will be made instruments of oppression until the law is repealed which gives a special privilege to this class. In like manner the public have no way of finding out the blunders of probation officers; they are entitled to know whether the wrong man was sent to jail and the victim of circumstances and poverty unjustly sent to prison. Probation officers are better known in the community than police officers; if they call at a man's place of employment they advertise the fact that a man has become entangled in the meshes of the law. This unjust notoriety results in a greater punishment than the court would have inflicted upon him, namely the loss of his situation. Instead of going to the place of residence of a juvenile delinquent they oftentimes visit the boy in school within school hours and this advertises the boy to all his playmates and perhaps as a result of this blunder the teacher may "get down" on him and thus retard his reformation. They also report gossip and hearsay as facts to the court without taking pains to find out whether the information is reliable and authentic; at times the benefits of probation are overestimated and we see the farce of a probation officer interviewing a drunkard in the entry way of a tenement house and asking him his opinion of the character of a citizen.

The Policeman Lawyer.—After a policeman has been on the force about ten years he becomes "wise" and conservative. When a "chump" copper he made many mistakes and became proficient after many hard knocks on the shoals and quicksands of police experience. He begins to read law and learns a great deal of lame law from correspondence and evening law courses at various institutions. Judge Sharswood said "The trouble is not so much to know the law as to know where to find it. The twentieth century definition is not so much to know the law as to recognize it when found." The average police duties belong to the executive

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branch of our jurisprudence and the policeman does not bring to the study of law an equitable balance because he is unduly prejudiced on account of his environment. This is not surprising because a great many judges do not know how to read legal decisions intelligently and apply them to the facts in a given case. I venture to say that very few police court judges know how to distinguish "intent" from "attempt" in the criminal cases which come before them for a decision. The policeman after a while becomes "conceited" and a term of service in "plain clothes" is very likely to impair his usefulness. A legal mind is not a common asset; the policeman who tries to blend the characters of lawyer and policeman will invariably bring about a miscarriage of justice. A policeman or detective to be successful must have an analytical mind; he must have a good mental "sifter" and be able to distinguish lies from truth. The judge at times is likely to become careless and take too much stock in police evidence; he seems to forget that a policeman looking for promotion considers each case an asset for his future advancement and the result of a given case is a matter of selfish pride to him and this is irrespective of the justice of the proceedings. In the "guard room" they talk about their court cases and the "fly cop" in the station must keep his record up just as the walking delegate of the union must have "strikes" in order to hold down his job. A little learning is a dangerous thing and the police officer who is partly a lawyer is a menace to the community. The thief who is half lawyer is a "fixer;" he uses the names of people without authority and succeeds in injuring the reputations of citizens in order to obtain for his "pals" some temporary favor. The policeman who thinks he ought to be a magistrate makes a failure of both the legal and detective professions because his untrained mind is unequal to the occasion.

The "Fixer."—In the opinion of the average thief the ability of a lawyer is a secondary consideration. In every large city there are a great many people whose means of subsistence is precarious, and the services of this class can be called into requisition at a very short notice. This class of people are living on their wits; they travel on the border line of the law, and are constantly in need of a lawyer to help them out and save them from jail. They repay a lawyer by infringing upon his profession and doing "law work" for "cheap thieves" for a piece of loose change. The thief enlists their services by "bulling" them along in this manner: "Johnny, you're a smart fellow, go and see him, pull him off; tell him that the man in jail will make it all right." If the thief is useful to the police he can deliver a few small favors and he must help the department whenever it is in his power to do so. A thief "fixer" is

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always a stool-pigeon; he travels with the gun mobs and leaks to the authorities the names of the men who constitute the various "mobs." There is great jealousy among "thief fixers;" one "fixer" is jealous of the success of another. Of course the "fixer" has a woman out stealing for him and she takes a certain pride in having a "smart fellow" for a "mate." They are unable to help a man in trouble; the favors they receive would be granted anyway, and in this manner they manage to obtain a certain prominence in the social circle of the "underworld." They promise everything to people to obtain a slight benefit for themselves; use your name without authority and promise money to people which they never pay. They manage to live off square people and have a certain faculty of throwing the "dirty work" over upon honest citizens. They last about so long in every city; they soon wear their welcome out and the activity of police and citizens caused by their despicable conduct makes the locality too hot for them and they pack up their effects and move on to another stamping ground. The thief "fixer" loves to hang around hotels and "tout" how much he knows; he has the "cheek" to ask a lawyer whom he owes money and from whom he took a case to obtain for him permission to go into court to interview thieves in the dock. The "fly" pickpocket today is a brain-tapper; he plays safe and uses decent people as a matter of convenience to bridge him over his entanglements in the law. In this manner he uses both police and lawyers, plays upon their sympathies and gets all the benefit of their good nature without paying for it.

The Beggar's Opinion of the Judiciary.—It is interesting to ask the vagrant what his personal opinion is concerning the legal qualifications of the different members of the judiciary. The ability of the judge is determined by the leniency or severity of the sentences imposed in various cases. If a judge is easy-going and imposes light sentences the vagabond sings his praises and extols him to the skies. In like manner if the judge is unnecessarily inquisitive and imposes severe sentences he comes in for universal condemnation. After all he is no different from the rest of the human family; it is human to think well of the man who does you a favor and also to feel unkindly towards the man who goes out of his way to injure you. He can tell you in a moment whether a judge is sincere or simply "playing to the galleries." The quiet judge he fears because experience has taught him that a "barking dog seldom bites;" the judge who gives a stump speech from the bench is more likely to let him off than the quiet judge who has domestic likes and dislikes and who wreaks his vengeance upon whomsoever happens to be near him. He knows it is almost next to useless to try to pull the "wool"

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over a judge's eyes; the judge is listening to truths and lies all day long and the best place to learn human nature is from the bench of a police court. Then again a judge will call an inquisitive probation officer to find out if his story concerning his last place of employment is true or false; and the sentence will be increased if he is caught in a lie. So he takes a more discreet course and handles the truth rather carelessly, and tells the court that he is a printer out of work on account of a strike and forced to tramp from one state to another in search of employment and forced to leave behind him a wife suffering from the ravages of consumption. A man can always take refuge behind his wife's ailments and as most of the judges are married a single man has a very little show compared with the malefactor who can use his wife as a legal asylum and thereby escape the wrath of the law.

THE COURT OF DOMESTIC RELATIONS OF CHICAGO.¹

WILLIAM H. BALDWIN, WASHINGTON, D. C.

If the report of the first year of the Domestic Relations Court of Chicago is not an epoch-making document, since the Domestic Relations Courts of Buffalo and of New York City preceded it in this special field, it is at least an epoch-marking report, because neither of those courts has set forth so fully and clearly the work it has been doing. Moreover, the report states so frankly the principles by which the court is actuated in dealing with the problems presented, and makes it so plain that something besides the letter of the law must be taken into account if they are to be adequately handled, that it deserves study by all who are interested in the welfare of society.

For society is founded on the family, and the Domestic Relations Court deals chiefly with those who violate family obligations in such a way that they commit an offense against the public. Out of 2796 cases in which final orders were issued during the year, 2168 consisted of abandonment or non-support of wife or child, contributing to the delinquency or dependency of children, or failure to send them to school; 416 were cases of non-support of illegitimate children, while 212 only grew out of offenses committed directly by the children or others, or by others against children. In our present social life there are many influences which contribute to these offenses. Judge Goodnow is not content to see only so much of this as the narrow space of his courtroom reveals, but he has looked before and after at the procession of offenders as they have passed before him, seeking why they have come there, and how other influences can be brought to bear which will make them again good citizens. The report is therefore not simply statistical, though the figures are complete and very intelligently arranged; it shows how closely a chapter in criminology is connected with the fundamental life of modern society.

In 1987 cases out of the 2796, or more than 70%, the offense consisted of non-support of wife or children, or both, sometimes coupled with desertion. While this offense is often aggravating, and seems to deserve the severest punishment, it differs from almost every other in that severe punishment prolongs and makes complete the suffering of those against whom the crime has been committed. The purpose of the judge in such a case should be, not to inflict retributory suffering on the offender, but to secure support for the family.

¹First Annual Report to April 1, 1912.

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While the cases of illegitimate children, which constituted 15% of those disposed of, do not involve the transgression of legal family duties, the conditions as to support are similar, implying similar treatment; and it is worthy of notice that in 130 out of the 416 cases in which final orders were issued the parties married.

That the animating purpose of Judge Goodnow is not only to secure support, but also patiently to acquire and maintain such a knowledge of each case as will enable him to remove the causes of the non-support and restore the normal family relations by the use of all means at his command, is the most important feature of the report. Just as the special court itself was set up by Chief Justice Harry Olson under existing law, so Judge Goodnow has employed, in connection with his power to punish or to withhold punishment, such agencies already organized, even though wholly disconnected with the court, as would guide his judgment and support his efforts for the best results. As the Judge says, he has used "every agency in this city that works for the betterment of society and the upbuilding of humanity." Nothing could be more refreshing, nothing more encouraging, nothing more inspiring, than the establishment of this principle. It not only makes the court something more than a piece of retributory machinery, grinding out day by day its human burden for the prisons, but it brings the welfare agencies of the city into close connection with a wise and well-informed judge in each case, and the advantage of this to those whose good intentions are not always supported by full information or equally good judgment is very great.

This method of handling the cases does not indicate any lack of force or decision on the part of the court, for punishment seems to have been inflicted in all instances where the court thought it was needed; but it carries out the purpose of the court to secure, through a better knowledge of the conditions of each case, a "more just and sympathetic treatment of each offender"—not less just because intelligent and sympathetic.

The marshalling of all these agencies in the report so as to give each proper credit indicates that pride of place and power forms no part of Judge Goodnow's make-up, and emphasizes the underlying principle of organized charitable or welfare work—that only by the intelligent co-operation of all such agencies, of which the court thus makes itself in this respect a part, can the best results be secured. Some churches which have refused to adopt this principle may well profit by the court's example.

The actual good accomplished by these methods cannot be measured

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by the statistics, for much of it was secured without litigation. In 2896 instances, almost half of those which came to the attention of the court, no warrant was issued. Of these 1173 were referred to other agencies for investigation and 430 for assistance, while 247 seem to have been sent to other courts or prosecuting officers; 980 were simply given advice, while in 66 no action was necessary.

In 514 of the 2796 cases disposed of by the court the accused party was not found, and 1110 more were settled or dismissed, leaving 1172 in which sentence was pronounced, of which 72 were sent to the county jail, and 147 to the House of Correction, while 672 were released on their own bond and 101 gave other surety. Five were held to Criminal Court and 175 merely paid a fine. About one-half of those sent to jail went because unable to give bond in cases of illegitimate children. Those sent to the House of Correction were usually released on bond in 30 to 60 days, when ready to support their families. A strict account was kept of these and other orders to pay money for support, and as soon as any man became delinquent an attachment was issued. This was necessary in 399 cases out of the 900 in which orders were made, but in only 38 was it necessary to commit the delinquent to the House of Correction for failure to comply, a very gratifying record.

There is in all this a cumulative influence in repressing evil. An avowed purpose of the court is to give prompt trials, and to inaugurate a system whereby delinquent husbands may be promptly compelled to support their families. This system, so promptly executed, prevents delinquency, and the number of families in which it is effective increases as it becomes better known.

It is a benefit to offenders also, in revealing to them the real nature of their conduct and showing them that it is easier to fulfill their obligations voluntarily than under pressure of punishment. The salutary influences of some of the various agencies, backed up by the power of the court, in reuniting the broken ends of family ties have made happier lives for a number of men who might otherwise have continued to shirk responsibility.

The financial gain to the family, and indirectly to the community which would otherwise have to support them, is large. The report shows that there was collected during the year by the court from men brought before it \$36,679.20 for the support of their dependent wives and children; and an examination of the figures discloses a general monthly increase during the year, the total for the last half being almost exactly twice as much as it was for the first half. As Judge Goodnow says: "This monthly increase of amounts paid in does not indicate that aban-

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donment, dependency or bastardy is on the increase, but that those who have heretofore suffered in silence are bringing their complaints to the Court of Domestic Relations, where they are afforded relief which heretofore they could not find."

Nor does the table of collections show the full amount realized through the court's work, for in about half the cases the sums are ordered paid directly to the wife or custodian of the child or children, and a careful examination of the orders indicates that during the year "at least \$75,000 has gone to the support of women and children that would otherwise have been spent elsewhere while the families were objects of charity."

The economic aspects of this actual addition to the resources of the community ought to make a strong appeal to the people of Chicago. This is not as great a benefit as the moral and social results in the families, but it would be interesting to know what the total cost of the court has been, and how the balance stands financially. The sums collected will apparently still continue to increase.

Looked at from any standpoint it is evident that Judge Goodnow's conscientious work has been excellent, and therefore anything he says as to changes in the law which would facilitate it should be carefully heeded.

The gravamen of the offense in desertion, so far as the community, and often so far as the family, is concerned is non-support, and the law should cover it whether accompanied by desertion or not; in other words, it should apply to desertion *or* non-support, as the laws in most states do. The present Illinois law of 1903 was so written when introduced, but unfortunately it was changed, by accident or design, in its passage so that the offense consists of desertion *and* non-support, and it does not reach the more numerous cases of non-support where the man does not leave the family. Judge Goodnow rightly says that this is the most serious objection to the act, and he wants it amended so as to make non-support of either wife or children a crime.

He also calls attention to the inadequacy of the penalty in the case of illegitimate children, which is limited to \$100 for the first year and \$50 for nine years more, which is quite incomplete, and leaves a large deficiency for the community to supply in some way for half a dozen or more years after the law has been fully enforced. There is no reason why the obligation to furnish support, where a man's responsibility is clearly established, should not be the same for an illegitimate as for a legitimate child. In Ohio, Nebraska and Wisconsin the non-support law applies to illegitimate as well as to legitimate children. No injus-

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tice has resulted from these laws, and the authorities who have had most experience in enforcing them are emphatic in their opinion that a non-support law should include illegitimate children. Some theoretical objections to this have been raised by those who have had no experience, but who are averse to complicating a family desertion and non-support statute with obligations depending on relations originally unlawful; but if not so included the law relating to illegitimate children should require the same support and up to the same age as the the non-support law. The needs of the children are the same, and the community should require the father whose identity is properly established to supply them in the same way.

When a man cannot give bond for his appearance, or cannot make the payments ordered, in the case of an illegitimate child, he must be sent to jail for six months, and 33 men during the year were imprisoned in this way. Judge Goodnow says "this enforced idleness is a crime," because it lowers the man's physical and mental condition, and wants the law changed, as it should be, so the man can be confined in the House of Correction or some place where he can be given regular work.

This statement applies to all imprisonment and especially to that for non-support, where the cause is often a desire to avoid work. Men sentenced for non-support during the year seem to have been confined in the House of Correction where hard labor is part of the punishment, and this no doubt had much to do with the speedy change of heart which made them ready to do their duty if released; but hard labor is not required by the law itself. While this does not make much difference under Judge Goodnow's administration it would strengthen the law to have it require hard labor as an invariable part of the sentence, and also provide that for each day's hard labor performed the dependent family shall receive 40 or 50 cents. In the District of Columbia and Ohio this provision has proved of the greatest advantage in the execution of the law and the conversion of offenders, and the amount paid for such labor has been a gain to the District or county.

As Judge Goodnow says, non-support of wife or children should be an extraditable crime, as it already is when coupled with desertion, which is made a misdemeanor under the law. It would be a mistake to make it a felony to secure extradition, as was done by New York, followed by other states since, for it could not then be handled in Judge Goodnow's court by his efficient methods, which conclusively demonstrate the unwisdom of indulging in undue severity in such cases.

In this connection it seems proper to state that although Illinois

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was at the time extraditing deserters who had fled to other states on the charge of misdemeanor people in New York assumed that it was necessary to raise the offense to felony in 1905 in order to secure extradition, and some of them still maintain that it was by doing this that subsequent extraditions were made possible; but the record shows that Illinois in the five years from 1906 to 1910 inclusive, going quietly on under the existing law, brought back 128 deserters on the charge of misdemeanor, while New York, with a population more than 60% larger, brought back only 122 under its felony law, which makes the proportion of such extraditions as related to population 80% greater in Illinois than in New York.

Offenders brought back to New York City under this law must be tried in the Court of General Sessions. One of them extradited from St. Louis a little more than a year ago was confronted in court by his wife and little daughter, and in beginning the evidence it appeared that he had not answered a letter the child had written him. This made the judge so indignant that he refused to let the man say a thing in explanation and at once fined him \$1000, the money to go to the family, and sent him to the penitentiary for a year or two. This prompt action of the judge was fully reported in the newspapers, and seemed as commendable as some of the apt judgments of the cadis in the good old days of Haroun al Raschid; but inquiry several weeks afterwards revealed the fact that not one cent of the fine had been paid, and also that not one cent of seven such fines of \$1000 each, imposed in the same court in 1910 under the felony law in addition to imprisonment, had been paid.

The man was under a long imprisonment at the expense of the state, such resources as he had in St. Louis were being dissipated, the family was as destitute as before and no one was any better off. The fault, however, lies not so much with the judge, for most of the offenses for which men are convicted before him deserve severe punishment, as in getting the case into a court which deals mostly with murder, burglary and such crimes; but the contrast with the exhaustive preliminary investigations by Judge Goodnow, and his patient efforts to ascertain all the circumstances in the case in order to follow just the right course, is striking. It need not be said that the Domestic Relations Courts in New York City do not employ such methods as the judge referred to, and it is quite unfortunate that they are not given jurisdiction of non-support of wife or child as misdemeanor, so that they could secure extradition and handle the cases in the wisest way.

A National Desertion Bureau has been for some time maintained by the United Hebrew Charities of New York, and if an agency for

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finding delinquent husbands is established, as the report suggests, it may well be in connection with that, or closely related to it; and the law should also contain a provision that when, in the judgment of the Court of Domestic Relations, it is desirable to bring a deserter back from another state, the County Commissioners shall furnish the necessary funds. A law of 1907 in Indiana contains this excellent provision.

The cost of extradition in New York City has averaged about \$100 in each case, including quite a number from Chicago and some from San Francisco. The cost in Chicago, more centrally located, would probably be much less; but even if it amounts to more than the \$2500 or \$3000 a year probably required on this basis, the amount ought to be readily furnished if thought worth while by a judge who, by his patient and faithful work is already adding \$75,000 a year to the assets of the community.

The law of 1903 might be amended to cover the above amendments and some other minor points of which the judge speaks; but perhaps a better way would be to pass instead the Uniform Law on Non-Support and Desertion recommended by the Commission on Uniform State Laws. This was modeled largely on the Illinois law, with such changes, like the principal one now asked for by Judge Goodnow, as later experience had indicated, and it would not be out of place for Illinois, in bringing its law up to date, to return the compliment by adopting the law of the Commission as such, with such minor modifications as the paying for extradition and requiring hard labor in every case as the Commission has left to be worked out in each state. If it is thought best not to include illegitimate children under it the present law relating to them can be changed so as to make the obligation to furnish support and the method of compelling it the same, as they should be.

The work of a Court of Domestic Relations is of the greatest importance because it deals with the problem of family life, already under a strain because of the high tension at which people of the present day live, and it is to be hoped that the results in those already instituted will lead to the establishment of a similar court in each city large enough to maintain it. In smaller cities the work may be best done in the Juvenile Court, as it is now being done by Judge Taylor in Indianapolis, Judge Addams in Cleveland, though Cleveland might be large enough for a special court, Judge Black in Columbus and Judge DeLacy in Washington. Chicago is better by reason of what Judge Goodnow has accomplished during the last year. It was when the hands of Moses, the ancient law-giver, were supported that the battle was won, and all good citizens of Chicago should support Judge Goodnow in the battle against indolence and vice in which he is doing so much.

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CHESTER T. CROWELL,

Editor of the Austin Statesman.

The old saying that it is an ill wind that blows no one good, seems about to receive another endorsement in the fact that race hatred is one of the influences now at work to force the Court of Criminal Appeals of Texas to cease its blind worship of technicalities. The fact that Burrell Oates, a negro, who has been convicted of murder in the first degree five times, is still unhanged, might not have stirred as much comment as it has but for the fact that Holly Vann, a white accomplice, was convicted the first time he was tried and promptly hanged. Texas doesn't understand why it should be so difficult to hang the negro. The Burrell Oates case is one of the facts forcing both of the present candidates for Governor of Texas to declare for court reform, which will put additional obstacles in the way of reversal of either civil or criminal cases.

Even one of the judges of the Court of Criminal Appeals who wrote an opinion reversing the Burrell Oates case has admitted that Oates is "probably a very guilty negro." One technicality after another has stood in the way of his conviction and the case is now pending for the fifth time, after five juries have declared the negro guilty and assessed his penalty at death. At the last trial of his case, Burrell Oates testified he had then been in jail six years, eleven months and one day. He has now been in jail about seven and a half years and his case has been before the Court of Criminal Appeals more than two months on the last appeal. Many lawyers who have examined the record in the last trial, declare there is good reason to think the case will again be reversed and remanded on a technicality and that the Court is for that reason delaying the handing down of its opinion until after the Democratic primaries in July, because another reversal would be an issue in the forthcoming primaries.

While the Court of Criminal Appeals cannot clear itself of the odium of these four reversals, not one of which touched the real merits

¹Citations in Burrell Oates Case.—51st Tex. Crim. p. 449. 50th Tex. Crim. p. 39. 48th Tex. Crim. p. 131. 56th Tex. Crim. p. 571. 103rd S. W. p. 859. 95th S. W. p. 105. 86th S. W. p. 769. 121st S. W. p. 370.

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of the justice of the verdict it overthrew, fair persons must admit that the basic error was committed by the prosecutors and grand jury. Burrell Oates was indicted for the murder of Sol Aronoff, a merchant of Dallas, Texas, when he should have been indicted for robbery with arms, which is also a capital offense. Robbery with arms has been proved every time the case was tried, but to say who killed Sol Aronoff when more than one person fired a pistol in a small room while all were excited is difficult, as the trials of the case have shown.

Examination of the testimony of Mrs. Sol Aronoff leaves the reader in doubt as to whether she shot her husband by mistake or whether Burrell Oates shot him. The most careful scrutiny of that testimony does not remove the probability that she killed her own husband. At the same time, the law certainly intends that the jury shall be the sole judges of the facts, and they must have believed that Burrell Oates killed Sol Aronoff or they would not have held him guilty and assessed his punishment at death five times. The court insists upon intruding into this question, and questioning whether or not the juries understood the testimony.

The case of Burrell Oates is probably without equal in American jurisprudence. It stands forth as about the most conspicuous failure of the laws of a state to decide under present procedure with fairness and dispatch, whether a defendant is guilty or innocent.

The testimony which the court will read in the statement of facts now before it, is that Burrell Oates was convicted in 1892 in Fort Worth of killing another negro and sent to the penitentiary for a short term. In 1898, he was again convicted of killing a negro, this time in Dallas, and again he was sent to the penitentiary for a short term. This was brought out on cross-examination when the defendant was on the stand. Counsel for the defense objected and reserved a bill of exceptions. The defense devotes considerable attention to this testimony in the appeal. It has heretofore been a fairly well recognized proposition of law in Texas, that the conviction of a defendant so many years previous to the present trial should be considered immaterial and irrelevant testimony. However, the court may hold in this case that it was admissible as tending to show the value of the testimony of the defendant and the probability of its accuracy. This, however, remains to be seen.

Oddly enough, even such questions of law as this have been more or less scarce during the trial of this case because a great deal of matter which had no direct bearing upon the guilt or innocence of the defendant has been the cause of the previous reversals. It seems to one reading the record that every question of moment with regard to the admin-

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istration of criminal and other statutes in Texas and the whole machinery of prosecution have had first trial with the Burrell Oates case.

A brief review of the crime for which Burrell Oates has been repeatedly convicted will assist in a clear understanding of the points of law, which have resulted in these numerous reversals and re-trials. On the night of November 29th, 1904, in a suburb of Dallas, Sol Aronoff, a Russian Jew storekeeper, was held up by a white man and a negro. During the hold-up his wife came into the store with a pistol and fired at the negro. The white man fired several shots and Sol Aronoff dropped to the floor, fatally wounded. He died a few minutes later on a bed in the adjoining room, to which his wife took him. The white man and the negro rifled the cash drawer and departed running. They were seen by several persons, but could not be identified. The police hauled in the usual number of suspects and eventually found a white man who knew about the plans for the hold-up and told the story. He was not exactly an accomplice, but he knew enough to be a very valuable informant to the police. On his confession, if such it may be termed, Burrell Oates and Holly Vann, a white man, were held. They had already been under arrest, having been caught in the first police drag-net. Mrs. Aronoff went to the jail and failed to identify the negro or the white man. The police, nevertheless, decided to hold an examining trial in the case of Burrell Oates, and when Mrs. Aronoff came into the court room to testify she took one look at Oates and fainted, declaring before she did so that he was the man, and expressing surprise that she had not recognized him when she saw him at the city jail. Undoubtedly one of the principal points of difficulty about this case is the action of Mrs. Aronoff. She was deeply affected by the tragic death of her husband and she speaks English with some difficulty. While she seems to make herself clear enough to the jury, she is not so to the court, for the issue has actually been submitted as to whether or not she didn't herself kill her husband when she shot at the negro. The only thing that stands against this proposition is the improbability that she could have missed fire when she was probably within two feet of her husband at the time of the shooting. Nevertheless, the testimony seems altogether unsatisfactory, and the court has several times indicated this fact.

Going into the decisions of the Court of Criminal Appeals one finds that this case was first reversed and remanded for new trial on April 12, 1905. Judge Henderson wrote the opinion and Judge Brooks dissented. In fact, a divided court will be found almost throughout the history of the case. The point was made by the defense that the manner of selecting the jury had not given the usual number of veniremen and

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talesmen from which to choose. Note that it was not charged that the man didn't get a fair trial or that jurors who were prejudiced were selected. The point was clearly a technicality. It was shown that if the law had been followed to the letter, the attorneys would have had a larger number of men from which to select a jury and that the law intended they should have this larger number. Judge Brooks held that the error of the trial court was certainly a harmless error, but he stood alone, and the case went back for another trial.

On May 9th, 1906, the case was again reversed. This time Judge Davidson wrote the opinion and again Judge Brooks dissented. Judge Davidson held that the court had made an error in its statutory charge with reference to how the testimony of an accomplice should be regarded by the jury. He also held that the issue as to whether or not Mrs. Aronoff had shot her husband by mistake should have been submitted by the judge in his charge to the jury. Again the case was sent back for another trial.

The next time it was reversed by the Court of Criminal Appeals was on May 15, 1907. This time, however, Judge Brooks wrote the original opinion and affirmed the case. When a rehearing was asked, Judge Brooks was absent and Judge Davidson wrote an opinion reversing and remanding the case. He again called attention to the charge of the trial judge to the jury. He pointed out specifically that the judge, in charging the jury on the worth of the testimony of an accomplice, had said that the testimony of the accomplice must tend to connect with other testimony that tends to show the guilt of the defendant. Judge Davidson didn't like that word "tend." He said the testimony must not only "tend" but it must positively show the guilt of the defendant, and must positively connect with other testimony. He said that to use the word "tend" substituted suspicion of guilt for the guilt itself and the case was sent back for another trial. This was not all that Judge Davidson called attention to, but it was the point which he considered the most important.

On June 23, 1909, the case of Burrell Oates was again reversed and remanded by the Court of Criminal Appeals. This time Judge Brooks wrote the opinion and again affirmed the case. The dissents were based on queer grounds this time. When the motion for a re-hearing came along, Judge Davidson called attention to the fact that the jury had discussed the Holly Vann case and had seemed to consider the verdict in that case as bearing upon the Burrell Oates case. Vann, who was the white accomplice of Burrell Oates, had been tried and convicted and given a death penalty. Some of the jurors, it was alleged, were deter-

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mined that nothing less should be given Burrell Oates. Judge Davidson cited a long line of opinion to show that this constituted reversible error, and that the case should be sent back. Judge Ramsey also disagreed with Judge Brooks about affirming the case, but for another reason. It seems that when the case had been tried the last time, W. H. Nelms, who had prosecuted it the first time was District Judge. Therefore, he could not be the judge in this case. Governor Campbell asked the Attorney General's Department what to do about it, and the Attorney General answered to appoint a special Judge to try the case. The odd part about it all is that Mr. Lemmon, who was appointed by the Governor, seems to have handled the case in the ablest manner of all. There was no evidence of error in the record, when it came up from him, but Judge Ramsey held the Governor had no right to appoint a special judge to try a case than had the porter in his office. He writes one of the most earnest opinions he has ever handed down, in making this point, and he refers to Burrell Oates as "probably a very guilty negro," but says that it is necessary to have the court which tries him, authorized by the Constitution. Judge Davidson agreed with Judge Ramsey about this matter, although he did not write an opinion covering that phase of the case.

This case has excited statewide comment, not all of which has been serious. In fact the Bar Association of the State has had a lot of fun with the oddities of the Burrell Oates case. At the banquet in connection with the Texas Bar Association convention in Fort Worth in July of 1908 Yancy Lewis of Dallas, one of the ablest lawyers of Texas, spoke facetiously of this case as follows:

"The case came up in the District Court of Dallas County. Now, gentlemen, it came to pass that these individuals demanded a severance as was their constitutional right, and a white man who held the victim was put to trial and convicted. He appealed, as was his right, to the Court of Criminal Appeals, and the judgment was affirmed, and he was hanged. All these things are facts of history. The colored man was put to trial; the court appointed counsel to represent him; he also was convicted and the death penalty assessed, and his counsel said: 'I would not be satisfied in my own mind if I did not have the appellate tribunal review the proceedings,' and they were accordingly reviewed, and the Court of Criminal Appeals, ignoring the fact this ignorant African had got religion, reversed the case. Everybody then buckled up his belt and took a new hold. This ignorant African says: 'I have seen the New Light; I want to know if I can get out of here and commit suicide.' But his spiritual adviser told him that he must not lay hands upon him-

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self; that he must be executed according to law. He said, 'Let the law pronounce its judgment,' and they went to trial a second time. He was convicted, but the lawyer appointed by the court said: 'I could not afford to have a man hanged without having the proceedings reviewed,' and so he appealed the case. The negro felt his wings sprout under his coat, and he said: 'Gentlemen, I have but one request to make, and that is that I may be transported to an eternity of bliss as quickly as it suits your convenience. Can you organize a mob that will expedite these matters?' His spiritual adviser said to him that that would not be an execution according to law, and they took him up to the Court of Criminal Appeals, and they reviewed the case under our magnificent system, and reversed the case. He had been tried a third time under these conditions with a similar result. A third time his spiritual adviser has said to him: 'You must not commit suicide, you must be executed according to law.' A fourth time the case has been reversed—the celebrated case of Burrell Oates, associate with Holly Vann, who was hanged the first turn out of the box. Now what confronts us? I speak of clients—'our clients.'

"This poor African cannot be hanged according to law, and he cannot pass off the stage otherwise. When you talk about our clients, what are you going to do about it? Here is this poor African sitting at the bars on the second floor of the Dallas County jail, with four convictions and four times ready to enter upon his journey. Four times he has felt his wings sprouting under his garments. Now he is getting old. He was a young man when he committed the crime—he was a young man. Now he is middle-aged. Gentleman, I am getting old—an old man—but never will I surrender the belief—the simple faith—that if I wait long enough and all of us pull together, he can finally get hanged according to law under the magnificent jurisprudence that has been handed down from the fathers."

Again at the Bar Association banquet in Austin in 1909, Yancy Lewis referred to the Burrell Oates case as follows:

"But there is another side to the picture gentlemen. At Fort Worth a year ago I told you of the mournful and pitiable predicament of Burrell Oates who, with a white man that was hanged on the first turn of the box, in Dallas, killed an old Jew merchant and was defended by an appointee of the court, and who for five years lingered in the Dallas jail in the hope that ultimately he might be hanged according to law. I have come to you and say that again his case has been reversed upon the proposition that the Governor was without authority to appoint the judge who convicted him, the truth being that it had been given up by

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the community that there was not a lawyer in Texas who, under our present system, could convict a man defended by an appointee of the court and make the conviction stand. I hope, gentlemen, that, at some future time, your children or mine shall hear the result of that historic case, and that Burrell Oates has finally achieved the consummation of having been hanged under our present system, according to law. And in that, mark you, there is no aspersion nor intent to reflect upon those who hold upright and firm the proposition that according to the written law, the law shall be administered. To them all honor, to them all credit. It is, however, an arraignment, in my judgment, of a system which in its consummations and in its results does not seem to be greatly superior to the system which obtained in Nippur and Susa, 5000 years ago, nor greatly superior to the snapshot man in China at the present time, where they say that if a man like Leon Ling committed murder in China they would hang his father and his mother, his brothers and sisters and his aunts and his uncles. In the jurisprudence of China they have crude and coarse notions of justice, but they obtain results."

In justice to the Court of Criminal Appeals of Texas, it must be stated that the number of Texas cases in which there is real error is large. In a state where public school facilities are limited, where most of the population is rural and far from railroads, where race hatred not only against the negroes, but against Mexicans runs high, and the bitter fight between prohibitionists and anti-prohibitionists is continuous, there is necessarily a great deal of blundering and a great deal of prejudice exhibited in the courts. Juries do sometimes find a defendant guilty on insufficient testimony to warrant a conviction. District Attorneys make direct appeals to prejudice in their speeches to juries and the examination of witnesses frequently becomes nothing more than a wrangle between counsel and a person testifying, not through obedience to an order of the court, but because of malice, prejudice, or bias. But to the large number of cases which must be reversed because of harmful error in the trial, the Court of Criminal Appeals of Texas has added, year after year, scores of other cases in which the briefs of appellants contained nothing more than sophistry, sometimes clever and more often disgusting. And to make the situation still worse, the rural communities persist in sending to the legislature, year after year, scores of young lawyers who are looking forward to making a living by defending persons indicted by grand juries and who are therefore putting new difficulties in the way of District Attorneys at every session.

PROCEEDINGS OF THE KANSAS STATE SOCIETY OF CRIMINAL LAW AND CRIMINOLOGY.

WILLIAM E. HIGGINS,
University of Kansas.

The Kansas State Society of Criminal Law and Criminology was organized at Lawrence, Kansas, on May 17 and 18, 1912, under the auspices of the University of Kansas.

The morning of the first day was spent in the reception and registration of members, and the first session was held in the afternoon in Green Hall, the law building of the University, James W. Green of the School of Law presiding. After a brief address of welcome by Chancellor Frank Strong of the University and an explanation of the plan of the organization and its method of procedure by Professor William E. Higgins, two inspiring addresses were made, one by Col. Nathan William MacChesney, of Chicago, Illinois, sometime president of The American Institute of Criminal Law and Criminology, on "A Progressive Program of Criminal Reform," and the other by Rosseau A. Burch, Justice of the Supreme Court of Kansas.

On the conclusion of these addresses, the general meeting of the society was adjourned to permit the meeting of the following nine committees:

- Committee 1: Offenses and Their Prosecution;
- Committee 2: Trial Procedure;
- Committee 3: The Jury;
- Committee 4: The County Attorney;
- Committee 5: The Adult Offender;
- Committee 6: Juvenile Courts;
- Committee 7: The Criminal Insane;
- Committee 8: Appeals and Proceedings in Error;
- Committee 9: Causes and Preventions of Crime.

These committees continued in session for the afternoon and evening of the first day and until ten o'clock of the second, at which time they presented written reports upon the questions which had been submitted to them upon the program prepared prior to the meeting.

These reports may be summarized in five classes:

1. Propositions reported favorably with recommendation that they be drafted into bills for presentation to the next Legislature of Kansas;

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2. Propositions discussed and recommended for investigation by committees to report at the next annual meeting of the society;

3. Suggestions made in the reports or during the discussions thereon which may prove of value;

4. Propositions unfavorably reported;

5. Laws or practices of the State approved.

First: The following were recommended and adopted to be drafted into bills for legislation:

1. To provide a civil suit to recover a penalty for the infraction of the criminal law, where the offense does not involve moral turpitude or the wilful disregard of the rights of others;

2. To secure to cities of the state the power to provide the above proceedings;

3. A revision of the Crimes Act of the State;

4. To provide means by which all expert witnesses in criminal cases who receive compensation other than the statutory fees, shall be appointed by the Court, and their number limited and their compensation fixed by the Court.

5. To provide for expert alienists who shall be called to testify by the Court and not by either party to the controversy;

6. To change the time allowed for appeal to the Supreme Court from two years to one year;

7. To secure a small increase in the fund allowed for the supervision of persons on parole from the penal institutions;

8. After an investigation of the results of the laws of Indiana, Connecticut and Oregon relating to the sterilization of defective persons so far as concerns the causes and cure of crime, to draft a bill covering the same;

9. To provide for the inspection and condemnation of houses and their destruction when unfit for human habitation.

To the committee which is to formulate the last measure is referred the investigation of the question of housing and of family relationships and their relation to crime, with direction to report thereon at the next meeting.

Second: After recommendations of committees or after discussion thereof, the following were adopted for investigation by ad interim committees:

1. To details of a law by which the State may take the deposition of witnesses within the State, to be used either at the preliminary exami-

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nation or at the trial, in the event of the inability of the State to produce the witness;

2. To provide for the use, by the State, of depositions taken with the consent of the defendant;

3. To investigate an increase of the salaries of the County Attorney, on recommendation of the committee on the County Attorney that Section 3662 of the General Statutes of Kansas, 1909, be amended so as to increase the salaries fifty per cent;

4. To secure a classification of offenders and to provide for the segregation of the degenerate and vicious from the better grade of offenders;

5. To secure a habitual criminal law, keeping the habitual violator in confinement until cured;

6. To provide that prisoners should receive a share of their earnings, the same to go to their families or dependents. In case of young or unmarried prisoners (without families or dependents), the same to be held in trust by the Warden of the Penitentiary or the Superintendent of the Reformatory until invested or paid to the prisoner upon parole;

7. To investigate whether the parole board should consist of penitentiary officers familiar with the prisoner, or of a board appointed independent of the prisoner;

8. The organization and procedure of juvenile courts;

9. The treatment of juveniles on probation and parole;

10. Should the age limit be increased?

The committee on Juvenile Courts recommended that the age limit for introducing the offender to the Juvenile Court be increased to eighteen years, and that these courts be empowered to commit either to the industrial schools or to the industrial reformatory at their own discretion.

11. For the purpose of providing better service and increased remuneration, the Senate Bill was endorsed providing for a County Court, sitting continuously in each county, combining the functions of Civil, Criminal, Probate and Juvenile Courts. (But see the action of the Society recommending the appointment of a special committee to investigate and to report upon the entire fee system in the Juvenile and other Courts having jurisdiction of offenses.)

12. Whether some means should not be devised to compel counsel for the accused, upon the arraignment, to plead specially the defense of "insanity" when the mental disorder is known to such counsel;

13. The adoption of the following statutory provision:

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"The Supreme Court, without ordering a new trial, shall have the power to direct the trial court from which the appeal is taken to take additional evidence, the defendant being present, to make findings of fact and transmit the same, together with the evidence, to the Supreme Court, as now provided by law for a transcript of the evidence, such additional evidence being for the purpose of sustaining a verdict wherever the error complained of is lack of proof of some matter capable of proof by record or other incontrovertible evidence, defective certification, or failure to lay the proper foundation for evidence which can, in fact, without involving some question for the jury, be shown to have been defective."

14. To amend Article 3, Section 3, of the Constitution, by inserting the words "and in injunctions brought by the State," and the words "which may include provisions for review of questions of law reserved by the State in criminal cases, whether the accused has been convicted or acquitted," so that the section shall read as follows:

"3. The Supreme Court shall have original jurisdiction in proceedings in *quo warranto*, *mandamus*, *habeas corpus*, and in injunctions brought by the State, and such appellate jurisdiction as may be provided by law, which may include provision for review of questions of law reserved by the State in criminal cases, whether the accused has been convicted or acquitted."

15. The adoption of the following statutory provision:

"The trial court may submit to the jury the issues of fact arising upon the pleadings, reserving any question of law arising in the case for subsequent argument and decision, and such court and the Supreme Court, to which the case may thereafter be taken, shall have the power to direct judgment to be entered either upon the verdict or upon the point reserved, as its judgment upon such point reserved may require;"

16. To investigate sanitation in relation to the diminution of crime;

17. How may ordinary court methods be supplemented by additional efforts to discover the causes of irresponsibility or of criminal tendencies?

Third: Suggestions made in reports or during discussions:

1. To employ in every school system a man to have charge of instruction in hygiene, physical and medical examination of school children, health conditions in school buildings, physical exercise, playgrounds, play, athletics, care of backward children, truancy, and probation cases;

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2. That advantage be taken of the statute of this State providing for county detention homes, to be used for the temporary care of dependent children, and also for the temporary custody of delinquent children, who cannot be sufficiently watched or controlled in their own homes, and for whom, nevertheless, it is not clear that a prolonged confinement in the industrial school or in the industrial reformatory is necessary;

3. The social supervision of boys' clubs, fraternities, gangs, amusement halls, and the establishment of playgrounds and other kinds of amusements for all classes, and provision for industrial education;

4. The codification of all laws affecting juvenile offenders;

(Remark—May not this be confined to those laws which touch the care and custody of juvenile offenders both before and after their apprehension?)

5. Do the delinquency laws adequately provide for the sightless child?

6. What provision may be made for the care of the delinquent child in his own home?

Fourth: The following were unfavorably reported by committees:

1. The appointment of the County Attorney by the Court;

2. Whether the issue of "insanity" and of "not guilty" shall not be tried by the same jury, and, if the verdict be "not guilty, being insane," whether the accused shall not be committed to a State hospital to be treated until, after re-examination he shall be discharged as sane, provided it be further found that a recurrence of insanity will not result in acts, which, but for insanity, would constitute a crime?

The above was reported unfavorably because the committee believed that the provision was no improvement upon the present law of Kansas.

3. To establish a State commission of specialists on mental diseases with absolute permission in the State and in the accused to call one expert each.

4. Whether it might not be practicable to co-ordinate with organizations in other states to secure laws by which the testimony of non-resident witnesses may be obtained in criminal cases?

Fifth: The following provisions of the laws of Kansas were approved in answer to questions submitted to committees:

1. The determination of the sanity of the accused during the trial;

2. The segregation of the criminal insane for special treatment;

3. The present practice under the decision in *State v. Keehn*, 85 Kan. 765, by which it is made not only the right but the duty of the trial court to supplement counsel's examination of witnesses, whenever the interests of truth require.

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The following questions were either not reported or were reported without any recommendation:

1. Whether the rule should not be changed that forbids the court or jury from considering the failure of the defendant to testify, and that prohibits any reference to such failure by the prosecution;

2. Whether, to avoid delay, mistrial, or corruption, the law may not be amended so as to allow fourteen jurors to sit in a case, any twelve of whom may return a verdict;

3. Whether, to avoid delay due to sickness, or other incapacity of a single juror, the law may not be so amended as to permit less than twelve jurors to return a verdict;

4. Whether, to avoid mistrial, or corruption, the law may not be so amended in other ways than above, as to prevent a single obstinate or corrupt juror from forcing a compromise or from hanging the jury;

5. Whether, to avoid delay, mistrials, or miscarriages of justice, the law may not be amended so as to improve jury service and the quality of jurors by better provisions for their comfort;

6. Whether, in view of the advantage springing from the present practice of permitting convictions of lesser offenses included within a greater offense charged in the information, it might be possible to devise a new system of classification of offenses so as to extend this advantage;

7. What are the relative shares of native endowment and social environment in the tendency to crime?

This was reported as a very general proposition, requiring biological, psychological, and sociological investigation extending over a long period of time for which the committee makes no recommendation.

8. What are the principal noxious elements in the social environment?

This was reported without discussion or recommendation, but with the comment that among the noxious elements are bad housing and defective family life, the social evil, venereal diseases, intoxicating liquors and deleterious and noxious drugs.

9. It was recommended that any investigation of a liquor policy in relation to crime should be deferred for the present.

10. What impulses in the adolescent are the basis of the offenses committed by him?

President, the Honorable C. A. Smart, Judge of the Fourth Judicial District; First Vice President, Sherman Elliott, Secretary of the State Board of Control; Second Vice President, J. K. Coddington, Warden of the State Penitentiary; Secretary, William E. Higgins, Professor of Pleading and Practice, University of Kansas. Additional members of

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the Executive Board: W. H. Carruth, Vice-Chancellor of the University of Kansas; F. W. Blackman, Dean of the Graduate School of the University of Kansas; the Honorable J. C. Ruppenthal, Judge of the Twenty-third Judicial District; W. H. Charles, Superintendent of the Boys' Industrial School, and M. F. Amrine, Superintendent of the State Reformatory.

The Society then decided to meet next December, under the auspices of the University of Kansas, for the purpose of receiving reports of ad interim committees and preparing needed measures to submit to the next Legislature, which meets in January, 1913.

Resolutions (1) thanking Colonel Nathan William MacChesney and Justice R. A. Burch for their addresses and efforts during the sessions, (2) affiliating with the American Institute of Criminal Law and Criminology and directing the appointment of delegates to its next meeting in Milwaukee, and (3) requesting the Senators and Representatives to procure the publication of the statistics relating to criminals and crime as taken during the last census, were adopted.

The meeting closed with a dinner complimentary to the members, at which the following theme was discussed by the gentlemen named below:

"The relationship of the several callings or institutions to the united movement to secure improvement in criminal law and procedure and in the treatment of the dependent, the delinquent, and the criminal:"

1. Of the Public School men, M. E. Pearson, Superintendent of Public Schools of Kansas City, Kansas;
2. Of the Physician, Dr. H. C. Hopper, Lawrence;
3. Of the Probate Judge, the Honorable Hugh Means, Judge of the Juvenile Court of Douglas County;
4. Of the Heads of Charitable and Correctional Institutions, H. W. Charles, Superintendent of the Boys' Reformatory;
5. Of the Sociologist and Psychologist, Dean F. W. Blackmar, University of Kansas;
6. Of the County Attorney, E. T. Foote, County Attorney of Reno County;
7. Of the Attorney General, John S. Dawson, Attorney General;
8. Of the School of Law, James W. Green, Dean of the School of Law, University of Kansas;
9. Of the Lawyer, Colonel Nathan William MacChesney, Chicago, Ill.;
10. Of the University, W. H. Carruth, Vice-Chancellor of the University of Kansas.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

PROFESSORS CHESTER G. VERNIER AND ELMER A. WILCOX.

ACCOMPLICES.

People v. Coffey, Cal., 119 Pac. 901. *The Giver and Recipient of a Bribe.* The defendant was indicted for agreeing to receive and receiving a bribe. He was a member of the board of supervisors. Another member of the board, testifying under a promise of immunity, swore that he offered the defendant \$4,000 for his vote in the matter of the over-head trolley, that defendant agreed to vote for the franchise, and did so and that the witness paid the defendant the \$4,000.00. It was proved by the testimony of independent witnesses that the defendant voted in favor of the ordinance relating to the over-head trolley system, and that a fund was paid by the street railway company into the hands of the man from whom the principal witness for the State testified that he received it. Held that as the guilty act of two persons was necessary to constitute an agreement to receive the bribe, and as the principal witness for the State, by offering the bribe, became "an actual participant in the crime, as well as an aider, abettor, adviser and encourager in its commission," he was an accomplice. The fact that the penal code made it a separate offense to offer or give a bribe, did not prevent the witness from being an accomplice in the crime of agreeing to receive one. As there was no evidence, excepting that of the accomplice, that the defendant entered into a corrupt agreement, or that he received any money for his vote, the conviction was in violation of the statutory provision "that a conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence." Hence the conviction should be reversed.

ASSAULT AND BATTERY.

Luther v. State, Ind. 98 N. E. 640. *Intent.* An assault and battery may be committed upon one riding on a bicycle by another driving an automobile in unison with the bicycle, since the force need not be direct, but intent is an essential element of the offense.

Intent by an automobile driver to commit an assault and battery by driving his car against another may be inferred from circumstances legitimately permitting it, as by intentional acts directly causing the injury done under reckless disregard of the safety of others, or the commission of an unlawful act naturally leading to such injury, but intent to injure cannot be implied from a lack of ordinary care.

BRIBERY.

United States v. Van Wert, 195 Fed. 974. *Meaning of "Officer of the United States."* Under Const. art. 2, sec. 2, providing for the appointment of officers of the United States, an "officer of the United States" within Pen. Code, sec. 117 (Act March 4, 1909, c. 321, 35 Stat. 1109; U. S. Comp. St. Supp. 1911, pp. 1623), punishing the acceptance of bribes by the president by and with the advice and consent of the Senate, or by the president alone, the courts of law or heads of some executive department of the government, and a special officer appointed by the Commissioner of Indian Affairs for the suppression of the liquor traffic among the Indians, is not an "officer of the United States."

Pen. Code, sec. 117 (Act March 4, 1909, c. 321, 35 Stat. 1109; U. S. Comp

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St. Supp. 1911, p. 1623), punishing any officer of the United States accepting a bribe to influence official action, is highly penal and must be construed at least with reasonable strictness, and unless the act charged to have been done by accused is a violation of some act of Congress or some departmental rule or regulation authorized by Congress, the violation of which is declared by it to be an offense, no crime has been committed.

BURGLARY.

People ex. rel. Hurbert v. Kaiser, Warden, 135 N. Y. Supp. 274. *Meaning of "Break."* Penal law (Consol. Laws 1909, c. 40) sec. 400, defines the word "break" as breaking or violently detaching any part, internal or external, of a building, opening any outer door of a building, or any window, shutter, scuttle, or other thing closing an opening, or obtaining an entrance by or through any pipe, chimney or other opening. Held, that the admission that accused in the night-time without invitation, right, or lawful occasion entered the dwelling of another and therein committed an offense was sufficient to sustain a conviction of burglary in the first degree, notwithstanding he testified that he entered by a basement gate, ash hoist, and cellar door, all of which he found open.

CARRYING WEAPONS.

Cheney v. State, Ga. App., 73 S. E. 617. *Temporary Possession.* A statute prohibited all persons from having or carrying about their persons, any pistol or revolver outside of their own homes or places of business, without first having obtained a license so to do. It was proved that the defendant had a pistol in his possession on the public road of the county in which he was indicted, and that he did not have the required license. The defense was that the pistol had been left at his house by his neighbor, to whom it belonged, and that he was carrying it to the house of the owner for the purpose of delivering it to him, and was not carrying it about his person within the purview of the statute. Held that if this were true, it would constitute no defense. While it may be that the owner of a pistol that had fallen from the window of his house on the public street might pick it up for the purpose of carrying it back into his house without violating the statute, or that other like cases of emergency might occur, the construction contended for by the defendant would not only make evasion of the statute easy, but would render the act practically ineffective.

CONSTITUTIONAL LAW.

State v. Dawson, Kan., 119 Pac. 360. *See that the Laws are Faithfully Executed.* The constitution provided that "the supreme executive power of the State shall be vested in a governor, who shall see that the laws are faithfully executed." A statute made it the duty of the county attorney or the attorney general to issue subpoenas for such persons as he should have reason to believe to have knowledge of any violation of the prohibitory law. A newspaper writer had published an article, stating that there were habitual violations of this law in certain cities. The governor directed the attorney general to examine this writer. The attorney general refused to make the examination authorized by the statute, stating that he had made private inquiries of the writer and satisfied himself that he had no information of value. The governor then brought mandamus proceedings to compel the attorney general to make an investigation under the statute. Held that the constitutional provision gave the governor power to secure efficient execution of the laws. That the statutory investiga-

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tion was a cause or matter within the purview of a statute requiring an attorney general to appear for the State and prosecute when required by the governor or either branch of the legislature. Hence the mandamus should be issued.

James H. Graham, Plff. in Err., v. State of West Virginia, 32 Sup. Ct. Rep. 583. *Punishing habitual criminals; due process of law.* A former convict is not denied due process of law by bringing him, after conviction, before the court of another county in a separate proceeding instituted conformable to W. Va. Code, chap. 165, secs. 1-5, by information charging him with prior convictions, which were not alleged in the indictment on which he was last tried and convicted, and, on the finding of the jury that he was the former convict, sentencing him to the additional punishment which chap. 152, secs. 23, 24, in such cases prescribes.

Chester S. Jordan, Plff. in Err., v. Commonwealth of Mass., 23 Sup. Ct. Repr. 651. *Due Process of Law.* One convicted of crime in a state court is not denied due process of law because, on the motion for a new trial, based upon the suggestion of the insanity of a juror, the state, conformably to the local law, was only required to establish the sanity of the juror by a fair preponderance of the evidence, and not beyond a reasonable doubt.

EMBEZZLEMENT.

Jackson v. State, Ala., 57 S. 110. *Vendee or Agent.* Under a written contract, goods were consigned to the defendant at a fixed price, payable at fixed times. He was at liberty to sell them to any person, at any price and on any terms he pleased, except that when he sold on credit he was required to take a note on a form furnished by the consignor. The defendant sold a part of the goods on credit and took the required notes from the purchasers. He then executed his own notes to the consignor for the prices he was required by the contract to pay, and assigned to the consignor as collateral security the notes received from the purchasers. He collected the amounts due on the purchasers' notes, and converted this money to his own use. He said to a witness that the money belonged to the consignor, but that he was going to keep it himself. Held that the contract was one of sale rather than of agency. "A person to whom goods are consigned to be sold, and who is at liberty to sell them at any price and on any terms that he pleases, he paying a fixed price to the owner, is not an agent, but a vendee." But when the defendant was authorized to collect the notes given by the purchasers, which had become the property of the consignor by the assignment, he was the agent of the consignor. Hence, when he converted the proceeds of these notes, he thereby embezzled the money belonging to his principal, which had come into his possession by virtue of his employment. The conviction was affirmed.

ESCAPE.

Ex Parte Shores, 195 Fed. 627. *Liability of a State Sheriff in the Care of Federal Prisoners.* A sheriff in charge of a county jail in Iowa who permits a federal prisoner legally sentenced to the jail to go at large from time to time violates Rev. St. sec. 5409 (U. S. Comp. St. 1901, p. 3658), and Code Iowa 1897, sec. 4891 et seq. punishing escapes, an "escape" being defined to be the voluntarily or negligently permitting a person lawfully confined in jail to leave the prison where he is confined before he is entitled to be released therefrom.

Stouse v. State, Okla. App., 119 Pac. 271. *Exclusion of Evidence.* It was claimed on appeal that the trial court erred in excluding material evidence in

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behalf of the defendant. The record did not show what the excluded testimony would have been. Held "when objections to a question are sustained, if it is desired to reserve the question as to the competency of the testimony sought to be introduced, for the determination of this court, the record must contain the same, showing what the testimony of the witness would have been had he been permitted to answer the question. Otherwise this court cannot determine as to whether the defendant has been injured by the ruling of the trial court." The conviction was affirmed.

Jamison v. People, Colo., 119 Pac., 474. *Dying Declaration*. On a trial for murder, a dying declaration, that the deceased had been murdered, was admitted in evidence. Held that the statement was inadmissible as being a conclusion or the expression of an opinion which tended to fix the degree of the homicide. As the jury may have fixed the degree by this statement, the judgment should be reversed. A statement that the defendant had shot the deceased was properly admitted as a dying declaration.

FORMER JEOPARDY.

State v. Van Ness, N. J., 83 Atl. 195. *Discharge of Jury*. Act March 22, 1899 (2 Comp. St. 1910, p. 1844), sec. 74a, permits the court in any criminal case to direct the verdict to be taken by the clerk of the court, and Act April 3, 1902 (2 Comp. St. 1910 p. 1523) sec. 29 empowers the deputy clerk, in the absence of his superior, to exercise all of the powers of the latter, including the reception of verdict. In a criminal prosecution, the court directed the clerk to receive the verdict in his absence, and the deputy clerk on receiving word from the jury that they could not agree discharged them. Held, that while this act was clearly beyond his powers, and did not relieve the jury from further consideration of the case, the jury having wrongfully disbanded without finding a verdict, accused cannot set up that trial as a former jeopardy; the essence of former jeopardy being either a former acquittal or conviction.

GRAND JURY.

Cannon v. State, Fla., 57 S. 240. *May be Reconvened to Correct Mistake*. A grand jury which found an indictment against the defendant was discharged. The term of court was adjourned until a later date, and a term held in another county during the interval. It was discovered that the name of the victim, as given in the indictment, was incorrect. When the term was resumed, after the recess, the grand jury was recalled. Sixteen of the original eighteen members returned, were sworn and charged, and without hearing any additional testimony, returned a new indictment for the same offense with the name of the deceased correctly stated. Held that the term of court could be adjourned and a term held elsewhere in the interval. A grand jury that has been discharged may be recalled during the same term of court. As this jury had previously investigated the case, they could correct the error without taking additional testimony. As more than twelve members were present and concurred in finding the new indictment, it was immaterial that two of the original body were not present. The conviction was affirmed.

In re Grand Jury, 135 N. Y. Supp. 103. *Immunity*. Under Penal Law, Sec. 584, as added by Laws 1910, c. 395, providing that no person shall be excused from attending and testifying before any court, magistrate, or referee on any investigation, proceeding, or trial for violation of the law against conspiracy, on the ground that the testimony required of him may tend to convict him

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of a crime; but no person shall be prosecuted or subjected to any penalty for or on account of any transaction, matter, or thing concerning which he may so testify, and no testimony so given or produced shall be received against him on any criminal investigation, proceeding, or trial, one cannot testify before a grand jury on an investigation of a conspiracy, without becoming immune from prosecution and punishment for the conspiracy, even though he stipulate to the contrary.

HOMICIDE.

People v. Friedman, N. Y. 98 N. E. 471. *First Degree Murder*. Where defendant and K. conspired to rob decedent in the night-time, and during such robbery decedent was shot and killed, defendant would be liable for murder in the first degree, although he did not do the actual killing, if the natural and probable consequence of the common enterprise was the killing of the deceased in case of resistance on his part, and hence a request to charge, assuming that if defendant did not fire the fatal shot he could escape liability unless the conspiracy contemplated the use of such force or violence as might cause death, was properly refused.

INDICTMENT AND INFORMATION.

Sumpter v. State, Fla., 57 S. 202. *Sufficiency*. A statute defined murder in the second degree as caused by "an act imminently dangerous to another." An indictment under this statute charged that the defendant assaulted deceased with a shot gun loaded and charged with leaden balls, and discharged the said leaden balls into the head and body of the deceased, thereby inflicting ten mortal wounds, of which the deceased did die. After conviction, it was objected that the indictment did not allege that the act was imminently dangerous to another. Held that the courts will take judicial notice that the facts charged constitute an act imminently dangerous to the person shot at, and that it would be superfluous to state that such an act was dangerous. The conviction was affirmed.

Marsh v. State, Ala., 57 S. 387. *Variance*. On trial of an indictment for larceny of a cow, proof of the larceny of a bull calf is a fatal variance. Legally the word cow is restricted to the female of the bovine species. A former decision that the word cow included a heifer was distinguished.

State v. Ireland et al. Me. 83 Atl. 453. *Substituting Copy of Lost Indictment*. Copy of a lost or mislaid indictment may be substituted by order of the trial court as soon as the loss is discovered and before the case is submitted to the jury, but omission to do so before conviction is not fatal; the substitution being properly made upon satisfactory evidence at a forthcoming *nisi prius* term.

Bennett v. United States, 194 Fed. 630. *Variance*. An indictment, charging defendant with inducing the interstate transportation for an unlawful purpose of Opal Clark, and evidence that the woman transported was known to defendant as Jeanette Clark, and that her real name was entirely different, did not constitute a variance, in view of the fact that the record clearly indicated the identity of the woman named in the indictment with the woman whom defendant must have known to the one intended to be named and with the woman who was actually transported.

Burchett v. United States, 194 Fed. 821. *Records*. The record in a criminal case should show that the grand jury which returned the indictment was

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duly sworn. That the grand jury which returned the indictment was duly sworn is sufficiently shown by a recital in a record that the grand jury was "impaneled" and by a recital in the caption of the indictment that the grand jurors were impaneled, sworn, and charged.

United States v. Winslow et al., 195 Fed. 578. *Demurrer*. Where the questions raised by demurrer to an indictment are both intricate and doubtful, the demurrer may be overruled, and their decision postponed until the trial on the merits.

INSTRUCTIONS.

Flowers v. State, Miss., 57 S. 226. *Error without Prejudice*. Defendant was indicted for assault and battery with intent to murder. It was proved that he shot at another and with intent to murder her, but failed to hit her. The court charged that if the jury found the defendant was guilty of assault with intent to murder they should find him guilty as charged in the indictment and he was convicted. Held that on this indictment the defendant could be convicted of the offense of assault with intent to murder, and a charge to that effect would have been correct. The same punishment would have been imposed had the conviction been for assault with intent to murder. Hence the error was harmless, although the defendant was convicted of a battery which he had not committed. But the court will not reverse a judgment for an error not prejudiced to the party complaining. Hence the conviction was affirmed.

Barker v. State, Ala. App., 57 S. 88. *Modification of the Instructions*. At defendant's request, the court gave a written charge as to reasonable doubt, remarking "this is a fool charge, but I will give it to you, gentlemen of the jury, as the Supreme Court has said that it is good law; but in my opinion it is misleading." A statute provided "charges moved for by either party must be in writing, and must be given or refused in the terms in which they are written." Held the comment upon the written charge constituted a modification of the instruction, as the jury would not give it respectful consideration, when the court expressed the opinion that the proposition was not good law but mere foolishness and misleading. The conviction was reversed.

Hay v. State, Ind. 98 N. E. 172. *Harmless Error*. Under Burns Ann. St. 1908, sec. 2221, which provides that the Supreme Court in appeals in criminal cases shall disregard technical errors and defects which did not prejudice the substantial rights of the accused, an instruction in a prosecution for seduction, erroneously giving corroborative effect to the fact that prosecutrix had made preparations for marriage, was harmless where, with all the evidence as to such preparations eliminated, the jury could not have failed to convict.

JURY.

People v. Toledo, 135 N. Y. Supp. 49. *Waiver of Objections*. In a prosecution for a felony, where one juror became ill after the evidence was all in, thus causing a mistrial, and accused and his attorney consented to a new trial before a second jury composed of one new juror and the eleven old ones, to whom the entire testimony was read, a conviction by that jury was valid; for while one accused of a felony cannot be legally tried upon an indictment except by a jury of twelve men, and a conviction of any less number is invalid, though defendant agrees to waive his rights, yet accused, though entitled to a jury of twelve new men, had the right to waive objection to the eleven old jurors.

In a prosecution for a felony, where one juror became ill after the evidence

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was all in, thus causing a mistrial, and accused and his attorney consented to a new trial before a second jury composed of one new juror and the eleven old ones, accused is entitled to have all of the witnesses produced before the jury, though his consent to the reading of their testimony, as taken in the former trial is a waiver of his rights.

LARCENY.

People v. Harold, Cal. App., 119 Pac., 949. *Distinguished from False Pretences.* The defendant was convicted of grand larceny upon proof that by fraud, trick and device, he induced the prosecutor to agree to buy from a third party certain moving picture films of little or no value, and received from the prosecutor \$145 to be paid for the films, paid some of the money to the third party and put the balance of it in his own pocket. The defendant and the third party had conspired to defraud the prosecutor and the defendant intended to steal the money when he received it. The prosecutor intended the \$145 to be paid to the third party for the films. Held that as the defendant purported to be acting for the prosecutor, so long as the money remained in the hands of the defendant it was the prosecutor's money. As the defendant then intended to steal it, and accomplished his purpose, the crime committed was larceny rather than obtaining money under false pretences.

LOTTERIES.

United States v. Purvis, 195 Fed. 618. *Acts Constituting a Lottery.* A company operated a scheme containing investment and loan features. The opportunity to obtain a loan was determined to a large extent by the way in which the applications were received at the office of the company, and where a number of applications were received at the same time they were put on the records of the company as they were opened and recorded. The investment features were not particularly attractive, and the main feature of the scheme was the loan feature, and the proposed loan contracts contained attractive terms. Held, that the scheme was a lottery because of a consideration and because of the existence of chance, based on obtaining a low number and thereby obtaining a loan, and because the obtaining of a loan at an early date was the prize in the scheme, since to constitute a lottery there must be a consideration, chance, and prize.

PARDONING POWER.

In re Opinion of the Justices. Mass, 98 N. E. 101. *Extent of Pardoning Power.* Under Const. p. 2, c. 2, sec. 1, art. 8, vesting the power to pardon offenses, except after conviction by impeachment, in the Governor, by and with the advice of counsel, conditional pardons or commutations or respites of sentences can be granted only in conformity to the advice of counsel; the words "power of pardoning offenses" including not only absolute pardons, but also lesser exercises of clemency.

PERJURY.

Allen v. United States, 194 Fed. 664. *Double Jeopardy.* One may be convicted of perjury for testifying falsely in his own behalf of his trial for counterfeiting of which he is acquitted, and is not thereby twice put in jeopardy for the same offense, but the government should not institute a prosecution for perjury on substantially the same evidence presented on the trial for counterfeiting.

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PLACE OF OFFENSE.

United States v. Reddin et al., 193 Fed. 798. *Place of Offense.* Shipment in Indiana of dynamite or nitroglycerine in interstate commerce by participants in a conspiracy to violate the federal laws against such shipment was the act of all the conspirators, permitting trial in Indiana of conspirators found in another state.

POLLING JURY.

McCullough v. State, Ga. App., 73 S. E. 546. *Denial Reversible Error.* In a case in which the defendant's guilt was doubtful, the jury, after several hours of consideration, returned a verdict of guilty. While the jury was still standing, and without giving counsel for the defendant time to demand a poll of the jury, the judge imposed the following sentence, "Twenty years in the penitentiary." Held that the judge had deprived the accused of his right to have the jury polled, or at least impaired the value of the right, as the strong approval of the verdict by the court "would have induced any wavering juror to abandon any intended dissent." The conviction was reversed.

PROBATION STATUTE.

Gehrmann v. Osborne, Warden, N. J., 82 Atl. 424. *Suspending Sentence.* Jurisdiction of a court to suspend the sentencing of a person convicted of an offense and to thereafter impose sentence, either before or after the term, was not taken away by P. L. 1900, p. 289, repealed by P. L. 1906, p. 104, c. 74, and re-enacted by chapter 75, p. 104, of the laws of that year providing a system of probation in the punishment of criminals. The term "suspended sentence," as used in criminal law, refers to the suspension of the execution of a sentence already imposed, and not correctly to the suspending of sentence.

PURE FOOD LAW.

State v. Gruber, Minn., 133 N. W. 571. *Sale in Another State.* The defendant was a traveling salesman for a company incorporated and located in the state of New York. While in Minnesota, he took an order for candy, subject to acceptance or rejection by the company, and sent it to the company's place of business in New York. This candy was shipped from New York and received by the customer in Minnesota. It contained coal tar dye. The Minnesota statutes prohibited the sale of candy containing coal tar dye. Held that the legislature could not and did not prohibit the sale of such candy outside the state, nor did it prohibit the shipment of such candy into the state. As the sale took place in New York it was not a violation of the statute. As the sale was not a crime the defendant did not become a criminal by aiding and abetting it in Minnesota, especially if it was not a crime in New York. Taking the order was not a part of the sale, so that no part of the sale took place in Minnesota. Hence the conviction was reversed.

REFORMATORY ACT.

People v. Smith, Ill., 97 N. E. 649. *Age of Offender.* Reformatory Act (Hurd's Rev. St. 1909, c. 118, sec. 10) divides persons who may be sentenced thereunder into two classes, viz., males between 10 and 16 years of age, and males between 16 and 21. Section 11 provides that a boy between 10 and 16 years of age "shall be committed" to the reformatory; while section 9 provides that both classes "may be sentenced" to the reformatory. Section 10 declares that in all criminal cases tried by a jury, where it is found that the defendant is between 10 and 21 years of age, the jury shall not fix the punish-

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ment, unless it shall also appear that defendant has been previously sentenced to the penitentiary, or that the offense is a capital one and Parole Law, sec. 1 (Hurd's Rev. St. 1909, c. 38, sec. 498), excepts from its application treason, murder, rape, and kidnapping. Held, that the parole law was not intended to destroy by implication the application of the reformatory act to males between the ages of 10 and 21, convicted of rape; but that the word "may" in section 9 of the reformatory act should be construed to mean "must;" and hence a boy of 19, on being convicted of rape could not be properly sentenced to the penitentiary.

Under Reformatory Act (Hurd's Rev. St. 1909, c. 118), a 10, providing for sentence of criminals under 21 years of age to the reformatory, where accused was convicted of rape, committed when he was 19 years old, and, at the time of the sentence, he was a male person over 21 years, he was not subject to sentence, either to the reformatory or to the penitentiary.

SELF-DEFENSE.

State v. Short, (Dela.), 82 Atl. 239. *Duty to Retreat*. In repelling an assault, no more force than is necessary may be used, and one assaulted cannot take the life of his assailant, where by retreat he may escape death or great bodily harm.

Sandford v. State, Ala., 57 S. 134. *Defense at Dwelling*. A man who is attacked at his dwelling by another does not have the right to stand his ground and if necessary, kill his adversary, unless he is free from fault in bringing on the difficulty, and is acting under an impending necessity to protect himself or his home.

SELF-INCRIMINATION.

Powers v. U. S., 32 Supreme Court Rep. 281. The admission in evidence at the trial of the testimony of the accused, voluntarily and understandingly given at the preliminary hearing, does not violate his privilege against self-incrimination accorded by U. S. Const., 5th Amend., although he was not warned at the time that what he said might be used against him.

TRIAL.

Leach v. State, Ind., 97 N. E. 793. *Harmless Error*. Under Burns' Ann. St. 1908, a 2221, which requires technical defects in action of the trial court not prejudicing accused's substantial rights to be disregarded, any error in permitting a witness for the state to refresh her memory from a memorandum, and in refusing to require her to deliver the memorandum to accused's counsel for examination, was harmless, where the other evidence conclusively established accused's guilt.

State v. Brown. (N. J.), 82 Atl. 302. *Harmless Error*. One challenging the validity of his conviction of crime under Criminal Procedure Act (2 Comp. St. 1910, p. 1863) a 136, may not obtain a reversal on the ground of inaccuracies in the instructions not producing manifest injury.

Diaz v. U. S., 32 Sup. Ct. Rep. 250. *Waiving Personal Presence*. One accused of an offense not capital, who is not in custody, and who was present when the trial was begun, may waive his right under the act of July 1, 1902, a 5, enacting a Bill of Rights for the Philippine Islands, to be personally present at every stage of the trial (Lamar, J., dissenting.)

SHIPPING.

United States v. Jones, 195 Fed. 860. *Wireless Equipment of Passenger*

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Vessels. In the prosecution of the captain of a steamship under Act June 24, 1910, c. 379, 36 Stat. 629 (U. S. Comp. St. Supp. 1911, p. 1265), which makes it a punishable offense for the master of any ocean going vessel carrying passengers, and carrying 50 or more persons, including passengers and crew, to leave any port of the United States on a voyage of more than 200 miles, unless equipped with a wireless telegraph apparatus, a plea setting up that the vessel did not carry passengers is insufficient where it also admits that the vessel carried to Europe four persons, not members of her regular crew, who contributed a fund of \$200 to one of the officers for extra food and accommodations, but avers that they paid nothing for transportation, but were assigned as members of the crew at a shilling a month although they were not paid and performed no services; the question of whether they were or were not in fact passengers being one for the jury under the facts.

SUSPENDED SENTENCE.

Fuller v. State, Miss., 57 S. 6. *Common Law Power.* The defendant was convicted of unlawfully selling intoxicating liquors and sentenced to be fined and imprisoned in the county jail for ninety days and pay the costs of the prosecution. It was further ordered that the jail sentence be suspended during the good behavior of the defendant. Defendant paid the fine and costs and was released. Later, on motion of the District Attorney and proof that he was still selling liquor illegally, the court adjudged that he had violated the condition, and ordered him to serve the suspended sentence. There was no statute authorizing the court to suspend the sentence. Held that at common law the power to suspend sentence in a criminal action is inherent in every court of record. This power is distinguished from the executive power to grant reprieves and pardons, as "the suspension of sentence simply postpones the judgment of the court temporarily or indefinitely; but the conviction and the liability following it, and all civil disabilities remain and become operative when judgment is rendered," while a pardon "removes the penalties and disabilities and restores the offender to all his civil rights." Hence the order was affirmed.

TRIAL.

Martin v. State, Ga. App., 73 S. E. 686. *Absence of the Judge.* While the jury were considering their verdict in a criminal case, the presiding judge left the county, and opened a special court in another county. He evidently returned to receive the verdict. It was not shown that the defendant was prejudiced by the absence of the judge. The evidence fully authorized the conviction, and there was no showing that the verdict was affected by any improper influence, or that the jurors knew that the judge was absent from the county, or that the verdict was in any way affected by that fact. Held that the personal supervision and control of the presiding judge is essential to a legal trial. When the judge left the county, the court ceased, for the time being at least, to exist in that county, and all that was done during his absence was nugatory and void. The case was distinguished from cases in which the judge was temporarily absent, but remained within the call of the jury. The Supreme Court had held that such temporary absence did not invalidate the verdict.

People v. Schafer, Cal., 119 Pac., 920. *Challenge of Juror.* The trial court disallowed a challenge for cause, and the jury was then challenged peremptorily. The defendant subsequently exhausted his peremptory challenges, but it did not appear that he had occasion or desire to use an additional peremptory

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challenge, or that the jurors finally accepted were not entirely satisfactory to him. Held that even though the trial court erred in disallowing the challenge, yet it was without prejudice in the absence of a showing that an objectionable juror was thereby forced upon the defendant. The conviction was affirmed.

Callahan v. United States, 195 Fed. 924. *Ground for Continuance.* A defendant in a criminal case in a state court, who while at large on bail pending an appeal from a judgment of conviction which is afterward affirmed, commits a crime against the United States, cannot be heard himself to ask for a continuance of the trial of the case against him in the federal court, on the ground that he has not served the sentence imposed by the state court.

VARIANCE BETWEEN INDICTMENT AND PROOF.

Cain v. State, Ga. App., 73 S. E. 623. *Allegations according to Legal Effect.* An indictment for perjury alleged that the oath was administered by the presiding magistrate. The proof was that it was administered by an attorney at law, by the authority or permission of the court. Held the attorney acted in behalf of the court so that in legal effect it was administered by the presiding magistrate. Consequently there was no variance.

VARIANCE.

Clark v. State, Miss., 57 S. 209. *Name of Victim.* Defendant was convicted on an indictment charging the murder of one Tode Wallace. The bill of exceptions showed that he killed Tode Hollis. He moved for a new trial on the ground that the verdict was contrary to the law and the evidence, and appealed from the order denying the motion. A statute provided that such a variance between the indictment and proof could be amended in the trial court. Another statute provided that no judgment should be reversed unless the record showed that the errors complained of were made the ground of special exception in the trial court. The name of the deceased in the bill of exceptions had in most cases been written Tode Wallace, and then changed to Hollis. The stenographer made an affidavit that the deceased was called Wallace by the witnesses, but that one of the attorneys called him Hollis, and that the stenographer in transcribing his notes thought he had probably made a mistake in taking the name from the witness as Wallace and consequently had made the correction in the transcript. Held that the record could not be contradicted by parol evidence. It was immaterial that the indictment could have been amended so as to conform to the proof, since this was not done. The statute forbidding a reversal unless the error complained of was specially excepted to does not apply when the offense charged has not been proved. "It will be a sad, sad day in the jurisprudence of any country when the courts will permit one of its citizens to be hung for the commission of a crime of which the record made by the State completely and fully acquits him of the charge. The standing aside from the beaten path of immemorial usage, worn hard and bare by the footsteps of our forefathers in the law, in order to make way for the passing of the funeral cortege, brought about by a too liberal construction of a criminal statute enacted in derogation of the common law, is the recognition and enforcement of too dangerous a doctrine to comport with the humane and beneficent conduct of a civilized court. * * * The question which this record presents is not what may be termed a technicality in any sense of the term. It is a matter of substantive right. To permit a person to be hanged when the evident shows that he was convicted for the murder of a person different from

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the one charged in the indictment is absolutely shocking in the extreme. Our conscience recoils with absolute horror from such a proposition."

One judge dissented on the ground that the defect could have been cured by amending the indictment to conform to the proof, and that the defendant, by failing to call attention to the variance, had waived his right to have the amendment made. The conviction was reversed.

O'Neal v. State, Ga. App., 73 S. E. 696. *Person Injured*. The indictment charged that the defendant, by false pretences, induced one Hutchinson to cash a check. The proof was that Hutchinson was assistant cashier of a bank. The defendant induced Hutchinson to cash the check with the bank's money, as its agent. On learning that the check was worthless, Hutchinson paid the bank the amount lost, out of his own pocket, in accordance with a custom of the bank that any loss resulting from the work of Hutchinson should be sustained by him. Held that the crime was complete when Hutchinson paid out the bank's money for the worthless check. The subsequent indemnification of the bank did not relate back to the time when the offense was committed. It was the bank, and not Hutchinson as an individual, that was cheated and defrauded. Hence there was a fatal variance between the allegations and the proof.

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NOTES ON CURRENT AND RECENT EVENTS.

ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE.

Psychopathic Criminals.—This is the second of a series of studies by Professor Svenson of the University of Upsala (*Gross' Archiv*, Vol. 45, 1912). He takes up the life history of a native of Sweden, who was a vagabond, thief and murderer. He endeavors to show that, like many other criminals, the cause of this man's actions were due to his diseased mentality. His ancestry showed alcoholism, tuberculosis, and excessive religious feeling. His father was harsh and stubborn, his mother extremely obstinate and opinionated. There were many apparently normal members of the family, and as a rule the whole family was above the average in intelligence. The mother, however, was much shut-in, extremely religious and sexually frigid.

From childhood N. showed himself to be of an intractable disposition, his parents and teachers being unable to make any impression upon him; he was intelligent, but would not work at his lessons. He committed his first theft at the age of seven, stealing a small sum of money from his home, an offence which he repeated so frequently as to constitute a habit, from which he could not be broken, and at the age of eleven he ran away from home with a comrade of the same age, having provided himself with money so stolen. After this he ran away several times, though never again with a companion, and on one of his wanderings he stole a horse, and stabbed it in several places, watching it bleed to death. This action he described in a letter written to the director of the prison at Långehölm, together with other doings of the same night, stating that he wrote because another man had been accused of the crime and was in danger of being unjustly imprisoned. He never attempted to lie about his crimes, nor in fact to recognize them as such. He committed several petty thefts, for which he was imprisoned for varying periods, and at the age of 18 finished a term of imprisonment, for theft and assault on the officer of the law, and left the Central Prison, in which he had been confined, with the avowed intention of either becoming an honest orderly person, or of committing a crime which would bring him to execution.

After a short stay at the home of his parents, he again set out on his vagabond existence, determined to become rich by any means, and managed by begging letters to collect a small sum of money, but when this was gone made the final decision to live by "robbery, murder and plundering." In pursuance of this scheme, he procured a revolver, and boarded the steamer *Prinz Carl*, lying in the Harbor at Arboga, determined to murder those on board and make away with their money and valuables. He locked the passengers in the saloons, attacked and killed the unsuspecting captain, then proceeding between decks attacked four persons there and disabled them, and finally having killed four persons and wounded eight, made off with what booty he could gather, using the life boat to reach the shore. When captured he fainted, but at the police hearing he was calm and related the details of the crime. After this, in an attempt at escape, he assaulted and wounded two warders.

TATTOOING

Before his execution, in December, 1900, he spoke of the atonement of Jesus and liked to sing hymns, and seemed to the prison chaplain to have become repentant. The warden, however, held a contrary opinion, and believed that he would have repeated his crime if given the chance.

The author's analysis of the case is as follows: N's father, himself an intelligent man, judged him to be an unusually gifted child, he was shown to be a fairly good student by his school records which, with the prison records lead us to believe that his elementary intellectual functions were normal. He had a very vivid imagination, and was very fond of adventure, especially of adventure at sea, as evidenced by his requests for books of adventure, by his love of vagabondage, and his eight months journeying on the water. His power of comprehension of the abstract was evidenced by his fondness for writing in the sphere of the abstract, and his ability to make fine distinctions in abstract ideas. His development of anti-social feeling however was striking. His parents had no influence over him from childhood, aside from his first flight from home, he was always alone in his undertakings, and as he grew older he developed a hatred for his fellow men. Pity in him seems to have been entirely lacking, and indeed many of his writings and actions showed a purposeless cruelty. Opposed to this poor development of altruistic emotions he showed strength of the egoistic, and had expansive ideas about himself and his future. He showed no remorse or shame for his deeds, but blamed others for his un-realized dreams of greatness and wealth. He was subject to attacks of impulsive wrath, which usually preceded his impulsive crimes, in fact his activity on the whole was characterized by impulsiveness, one result of which was his love of wandering, the outcome of a psychic unrest. His sexual nature seems to have been poorly developed. He masturbated moderately in prison, but cared little for women. His criminality seems to have been due to an inherited psychic defect. He possessed ethical standards, expressing disapproval of his mother, saying that although she had done him no evil she should have done him positive good. He justified his actions by self-made standards in conformity with his own nature. He was not a "moral imbecile," but rather possessed a perverted ethical sense.

The writer concludes that his environment, and his later treatment in prison (where he spent in all six years and four months in a lonely cell), did not conduce to his improvement; and when he was last liberated the prison officials concurred in the opinion that he was a dangerous criminal. One month later he perpetrated his multiple murder.

Svenson ends by stating his opinion that although the death sentence is seldom more suitable than here, as an ending to an abnormal, dangerous and unhappy life, capital punishment is a makeshift device for the protection of society, depending for its effect upon the fear of death excited in the criminal, and, as in this case not deterrent. Besides respect for human life shown by the state has an important ethical influence.

S. E. J.

Tattooing.—This interesting anomaly is discussed by W. Hauschild (*Gross' Archiv*, Vol. 45, p. 60), who reports a case of tattooing on the back of the head, which in his experience is unique.

The case was that of an artist, 26 years of age, who died of florid pulmonary tuberculosis. The whole of the back of the head, to the vortex, as well as both temples, had been smooth shaven, leaving only a narrow strip of hair

LEGAL-MEDICINE IN ITALY

in the region of the sagittal suture, had been tattooed; the motive, as far as could be gathered, having been to earn money by exhibition of the tattooed area, as the subject because of his diseased condition had been unable to work. The writer goes on to state that opportunity for investigation of the practice of tattooing is chiefly afforded by examination of the sick and criminal. Of the latter class, serious offenders, and those recruited from the higher classes are very rarely tattooed, in his opinion the greater reason for frequency of the practice among petty offenders being that numbers of them are confined in the same room with little to occupy them, the same reason of numbers crowded together with a small amount of occupation being given for its prevalence among soldiers and sailors. Hauschild thinks that in Germany shoemakers and slaughterers are more prone to indulge in tattooing than are men following any other occupation; few women practice it, but those who do are also to be found in the lower strata of society. The age incidence is usually between 20 and 25.

Lacassagne, from inquiries made, found the process reported as painful in two thirds of the cases, and slightly or not at all in the remainder, the decreased sensibility common in criminals often leading them to be tattooed in the most sensitive parts of the body. The lack of asepsis in the procedure may result in dermatitis, gangrene, amputation, death, and more rarely arterio-venous aneurism, inoculation with syphilis, etc. Each square inch of the body surface has been used by one group of people or another for tattooing; among some peoples the entire surface is tattooed, but among Europeans it is seldom found on the exposed parts, the hands and arms being the most frequent sites. The marks often serve as a means of identification of criminals. The designs are chosen to suit the region of the body, to fit the space, or in relation to the underlying organ. The emblems may be occupational, military, patriotic or religious; mottoes, amorous, lascivious, metaphoric and fantastic designs occur the latter being the most numerous. The motive is usually imitation or idleness; the choice of design is determined by occupation, desire to indicate devotion to some person, association or ideal; many wish to be tattooed for the sake of tattooing, these latter choosing their designs as the fancy strikes them at the moment. In Europe the tattooers are always men, but in North Africa, and among many barbarous and semi-barbarous peoples women tattooers are also found. Among petty offenders designs of immoral significance are frequent, these being weakly bound by conventional ties and usages of decency.

Lombroso believed that a relation of atavistic origin existed between habitual criminals and the frequency of tattooing among them, but at present no belief is held in such a relation.

S. E. J.

Some Aspects of Legal-Medicine in Italy.—In the legal-medicine division of *Archivio de Antropologia Criminale*, number 1, 1911, we find an examination of the legal provisions in case of emasculation. The Italian civil code annuls a marriage, if the *impotentia coeundi* can be established. But as the purpose of marriage is the continuation of the family, it would be more logical, if either the *impotentia generandi* or *concupiendi* were the criterion for a dissolution of the union. Because this physical disability is hard to prove, the civil code has had to accept as a solution of the problem the *impotentia coeundi*. The Catholic church accepts as ground for the dissolution organic, functional

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disabilities, which make the aims of the union, impossible. A special case, where the wife demanded the dissolution of the marriage, because her husband had been obliged to submit to a surgical operation, which deprived him of his sexual glands, led the author to take up this highly interesting examination.

Biologically the author shows the vital difference between eunuchs, who were deprived of their virility very early in life and completely, and such people, on whom the operation was performed after puberty. In the latter case the sexual secretion had time to act upon the physical and mental development of the person, a reaction which can never be obliterated, even by complete loss of virility at a later period. By the removal of their sexual glands after puberty men do not lose the *potentia coeundi*. The faculty of ejaculating prostatic fluid and in some cases even spermatoid fluid is proved in several cases. From the writings of Juvenal the author cites several passages of Roman ladies, who used eunuchs for the satisfaction of their sexual instincts. The sects of the Skopzy in Russia practices castration for sanctification, while it is resorted to in the Orient and along the southern shores of the Mediterranean for commercial purposes. The law for the compensation of accidents has to consider the consequences of castration on grown up men. The removal of the sexual glands does not interfere with the worker's economic efficiency, but the author thinks that not only the material side of the question should be considered. Each case ought to be judged on its individual merit; hence he is in favor of compensation in certain cases.

V. v. B.

Human Instincts and Social Reforms.—While sociologists recognize the importance for their science of the results of the science of psychology certain of them are questioning the importance of instinct as a factor in human social life at the very time when, in psychology itself, the recognition has become universal that man's whole mental life rests upon certain native reactions or innate impulses classified under the term instinct, says Prof. Charles A. Ellwood, in an article in the *Popular Science Monthly* for March, 1912, under the title of "The Instinctive Element in Human Society." Misconceptions of what instinct really is, Professor Ellwood thinks, explain the denial of the importance of the instincts in social life. The modern psychological conception of instinct is not metaphysical but biological. Instincts are inborn pathways of nervous currents, which have as their functional correlate inborn motor tendencies, and as their physical correlate inborn psycho-physical dispositions. They are the psychological aspect of heredity and it is as inconceivable that the organic individual should exist without them as without the general bodily structure. Being characteristics of the higher and more unstable portion of the organism, they probably vary more widely than the grosser physical traits. They are more modifiable owing to the fact that only about one third of the connections in the nervous system are made at birth, the other two thirds being acquired by the individual during his lifetime. These acquired connections greatly modify the character of the original ones. But, while there can be no question but that instinctive reactions are the basis of the relationships of individuals in society it is very difficult to say what proportion of human activities may be regarded as primarily instinctive. Instinctive reactions, especially in modern civilized society, are overlaid with a mass of habits, customs and tradition, and are constantly modified or inhibited by many other social factors; but it is an error to ignore the instinctive element, even in the complex

LAW EMPOWERING JUDGES TO SUSPEND SENTENCE

conditions of modern life. The practical consequence of the recognition of the importance of the instinctive element in human social life is to establish a wise conservatism with reference to the reconstruction of institutions and at the same time a progressive radicalism as regards the ultimate amelioration of social conditions. Any plan of social recognition which is made without regard to man's instincts is probably destined to failure; the only sure and probably the only safe method of social reconstruction is thorough education. These principles are of great importance in the consideration of any proposed social reforms. It is probably true that many of the problems of our present civilization are due to the fact that man's instincts are not yet adjusted to a more complex environment. But it is idle to think that it is practical to secure such adjustment through the elimination of socially undesirable natural tendencies by any means of artificial selection. The great problem of civilized society is not to suppress man's instincts, for that cannot be done, but to guide and control them by a system of scientific education, so that they will discharge themselves only in paths of social advantage.

E. L.

COURTS—LAWS.

Proposed Law Empowering District Judges in Louisiana to Suspend Sentence.—Section 1. Be it enacted by the General Assembly of the State of Louisiana, That in any case in a District Court in which any person shall have been convicted of any offense, other than one punishable with imprisonment at hard labor for more than seven years, and no previous conviction shall have been proved against him, if it shall appear to the court that, regard being had to the character and antecedents of the accused, to the nature of the offense and to any extenuating circumstances under which the offense shall have been committed, it is expedient that the accused be released on probation of good conduct, the court may, instead of sentencing him at once, to any punishment, direct that he be released on his entering into a recognizance, in such sum as the Court may fix, with or without sureties, and during a period equal to the maximum term of imprisonment which might lawfully be imposed under said conviction, to appear and receive sentence when called upon, and in the meantime to keep the peace and be of good behavior; *provided*, that whenever an appeal in any case shall have been taken to the District Court, such court may, subject to the provisions of this article, discharge the accused on probation and suspend the execution of the sentence appealed from; *provided*, that the court, before directing the release of an accused under this Act, must be satisfied that he has a fixed place of abode or a regular occupation.

Section 2. Be it further enacted, etc., That if at the end of said probation period the accused shall satisfy the District Court that he has not failed during said period to observe any of the conditions of his recognizance he shall be entitled to his final discharge.

Section 3. Be it further enacted, etc., That if at any time before the expiration of the probation period it shall appear to the District Judge that the order discharging the accused on probation was obtained by fraud, perjury, or by any sort of misrepresentation or suppression of facts, or that the accused has failed to observe any of the conditions of his recognizance, the Judge shall issue a warrant for his apprehension and shall remand him for sentence.

LAW TO ESTABLISH A METHOD OF PAROLE

Section 4. Be it further enacted, etc., That the exercise of the discretion vested by this Act in District Judges shall not be reviewable by any other court or judge.

W. O. HART, New Orleans.

Proposed Law to Provide the Method of Executing Death Sentences in Louisiana.—Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the punishment of death shall be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application of such current shall be continued until the convict is dead; *provided*, that until such time as the proper electrical appliances shall have been installed at the penitentiary, every sentence of death imposed in this State shall be executed within the walls of said penitentiary by hanging the convict by the neck until he is dead.

Section 2. Be it further enacted, etc., That every execution of the death sentence shall take place in the presence of the warden of the State Penitentiary, or of one of his deputies, of the coroner of the parish of East Baton Rouge, or of a practicing physician designated by said coroner, of a priest or minister of the gospel, if the convict so request, and of not less than four nor more than twelve other witnesses.

Section 3. Be it further enacted, etc., That when the sentence shall have been executed, the warden or deputy warden who was present shall make a *proces verbal* of the execution, which *proces verbal* shall be attested by three of the witnesses and shall, as soon as completed, be transmitted to the clerk of the court in which the sentence shall have been imposed.

W. O. HART.

Proposed Law to Provide for the Imposition of An Indeterminate Sentence in Louisiana.—Be it enacted by the General Assembly of the State of Louisiana, That whenever any person shall, after the adoption of this Act, be sentenced to imprisonment in the State Penitentiary or at hard labor, otherwise than for life, or where the maximum penalty does not exceed one year, it shall be the duty of the District Judge to sentence such person to an indeterminate sentence, the minimum of which sentence shall not be less than the minimum term of imprisonment fixed by the statute under which such person shall have been convicted, and the maximum not more than the maximum fixed in such statute; *provided*, that where no minimum term is fixed in such statute said minimum term shall be taken and intended as being one year.

W. O. HART.

Proposed Law Against Corporal Punishment in Louisiana.—Be it enacted by the General Assembly of the State of Louisiana, That whoever shall inflict or cause of be inflicted upon any prisoner any corporal punishment shall, upon conviction, be fined not less than \$10.00 nor more than \$100.00, or be imprisoned not less than 30 days nor more than 90 days, or both.

W. O. HART.

Proposed Law to Establish a Method of Parole in Louisiana.—Section 1. Be it enacted by the General Assembly of the State of Louisiana, That there is hereby created a Board of Parole which shall consist of the President of the Board of Control of the State Penitentiary, the Attorney General and the Lieutenant-Governor, in which said Board shall be lodged the power to determine when and under what circumstances a prisoner sentenced to an indeterminate sentence shall be paroled.

LAW TO ESTABLISH A METHOD OF PAROLE

Section 2. Be it further enacted, etc., That said Board shall, within thirty days after this Act shall have become a law, meet and organize and elect one of its members president, choose a secretary, who need not be a member of said Board, and adopt a uniform system for the marking of prisoners by means of which shall be determined the number of marks or credits to be earned by each prisoner as a condition of release on parole, and such other regulations as may be necessary for the carrying out of this Act, which system so adopted shall, however, be subject to revision by the Board from time to time.

Section 3. Be it further enacted, etc., That each prisoner sentenced to an indeterminate sentence may, a month prior to the expiration of the minimum term of his sentence, make application to the Board in writing and in such form as the Board may prescribe for his release upon parole; provided, that if deemed suitable by the Board the Board may in any particular case dispense with this rule.

Section 4. Be it further enacted, etc., That it shall be the duty of said Board of Parole, immediately upon the filing of said application, to enter into an investigation of the conduct of said prisoner during his term of imprisonment, and if upon such investigation it shall be found that the prisoner has, under the rules and regulations of said Board of Parole, become entitled to discharge from imprisonment upon parole, this Board shall order the release of said prisoner from imprisonment at the expiration of the minimum term fixed in the sentence; *provided*, that should said prisoner's conduct not have been such as to entitle him to discharge, the Board may, in its discretion, at any subsequent period not less than six months, investigate into the conduct of said prisoner since the date at which his parole was refused, and if, in the opinion of said Board, said prisoner's conduct has, during said period, been such as to entitle him to be discharged on parole, said Board shall order such discharge. Otherwise, said prisoner shall be required to serve the minimum period of imprisonment fixed in the sentence, subject to commutation for good behavior.

Section 5. Be it further enacted, etc., That whenever a prisoner shall have been paroled his parole shall expire only with the expiration of the maximum term of imprisonment fixed in the sentence, and, upon being paroled, every prisoner shall be required to promise that he will keep the peace and be of good behavior until the expiration of his parole, and should any person, after his release on parole, be charged with any violation of the same, he shall be arrested by the sheriff and brought before the District Court in the Parish in which such violation is charged to have taken place; and if, upon the trial of said charge, the court shall decide that the paroled prisoner has in fact violated his parole, the court shall remand him to the Penitentiary from which he was paroled, there to serve out the whole time for which his parole was given, subject to the deduction of the time which he had served prior to his parole and to any commutation for good behavior that he shall thereafter earn.

Section 6. Be it further enacted, etc., That every paroled prisoner shall, upon his being discharged upon parole, be entitled to be paid any sum that may be to his credit upon the provisions of Act No. of 1912, and shall be furnished with a serviceable suit of clothes, with transportation to such place as he may elect to go to within the State of Louisiana, and five dollars in money.

JUSTICES OF THE PEACE AND CONSTABLES IN MARYLAND

Section 7. Be it further enacted, etc., That all laws or parts of laws contrary to or in conflict with the provisions of this Act be and the same are hereby repealed.

W. O. HART.

The above bills failed to become law.—Ed.

Justices of the Peace and Constables in Maryland.—The following bill became a law in the last session of the Maryland legislature: AN ACT to repeal section 629 of Article 4 of the Code of Public Local Laws of Maryland, title "City of Baltimore," sub-title "Justices of the Peace and Constables," to repeal and re-enact with amendments section 206, sub-title "Constables," and 623, 624, 625, 627, 628, 629, 644 and 648, sub-title "Justices of the Peace and Constables," of said Article 4, and to add three additional sections to said Article 4 to follow immediately after said section 625, as amended, and to be known respectively as sections 625 A, 625 B and 625 C.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That section 629 of Article 4 of the Code of Public Local Laws of Maryland, title "City of Baltimore," sub-title "Justices of the Peace and Constables," be and the same is hereby repealed.

SEC. 2. *And be it further enacted,* That section 206, sub-title "Constables," and sections 623, 624, 625, 627, 628, 629, 644 and 648, sub-title "Justices of the Peace and Constables," of Article 4 of the Code of Public Local Laws of Maryland be and the same are hereby repealed and re-enacted with amendments so as to read as follows:

206. There shall be one constable for every ward of the City of Baltimore, who shall be appointed by the Mayor in the mode prescribed in section 25 of this article; said constables shall hold their offices for two years and their compensation, payable by the Mayor and City Council of Baltimore, shall be as follows: One of said constables shall receive the annual salary of \$1800 as chief constable; 7 of said constables shall receive the annual salary of \$1200; the remaining 16 of said constables shall receive each an annual salary of \$1000, and said constables, in addition to their functions as constables, shall have the following duties:

(a) Said chief constables shall also, under the supervision of the said five justices of the peace of the People's Court, have the custody of all the dockets, records and papers of the said justices, and it shall be his duty to see that they are safely and properly kept and preserved; and upon his removal from office, or the termination of his term of office shall deliver all of said dockets, records and papers to his successor. He shall receive, collect and account for, as hereinafter provided, all fees and costs payable by law to justices of the peace and constables in Baltimore City, except fees for affidavits and acknowledgments taken by justices of the peace other than those of the People's Court and except costs, fines, and forfeitures payable in criminal cases of the justices of the peace assigned to sit at the various police station houses in said city. Said chief constable shall, moreover, supervise the performance of their duties by the remaining constables. Said chief constable shall file with the Register of the City of Baltimore on the first day of each calendar month in each and every year, an account verified by his oath or affirmation, of all fees and costs collected by him as aforesaid during the preceding month, which said accounts shall show the titling, nature and disposition of the various cases and proceed-

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ings from or out of which the said fees and costs arose; and said chief constable, at the time of filing said accounts, shall pay over to the City Register the amount of said fees and costs received, to be accounted for by said Register as other moneys of the said city are accounted for. Said chief constable, before entering upon the duties of his office, shall give to the State of Maryland a good and sufficient bond, with a surety or sureties to be approved by the judge of the Superior Court of Baltimore City, in the penalty of twenty-five thousand dollars (\$25,000) with conditions that he will truly and faithfully discharge, execute and perform all and singular the duties and obligations of the office of constable and chief constable, and that he will account for and pay over to the Register of the City of Baltimore, all fees and costs which he may receive or collect; and that he will faithfully and truly account for and pay over to the person or corporation entitled to receive the same, all moneys belonging to such person or corporation which may come into his hands as such constable or chief constable.

(b) Two of said constables receiving the annual salary of twelve hundred dollars (\$1200) each, shall act as assistants to said chief constable in the performance of the duties aforesaid. Each of them before entering upon the duties of his office, shall give to the State of Maryland a good and sufficient bond, with a surety or sureties approved by the Judge of the Superior Court of Baltimore City in the penalty of ten thousand dollars (\$10,000) conditioned upon the faithful performance of his duties hereunder.

(c) Five of said constables receiving the annual salary of twelve hundred dollars (\$1200) each, shall also act as clerks to the respective five justices of the peace of the People's Court, shall keep the dockets of said justices, and, subject to the supervision and direction of the respective justices, shall prepare all writs and other papers pertaining to the cases instituted before, or to be tried before said justices. In the event of the absence of any of said constables from attendance upon the said justices of the peace, the chief constable shall designate one of the said two assistant constables to perform the duties of said constables so absent.

(d) Five of the remaining sixteen of said constables shall be designated by the chief constable as bailiff to the said justices of the peace of the People's Court, and one of them shall be in constant attendance during the sittings of each of said justices of the peace, and shall also perform the duties of a bailiff. In the event of the absence of any of said constables designated to act as bailiffs aforesaid, the chief constable shall designate one of the remaining constables to act for the one so absent.

(e) The remaining eleven of said constables shall, under the instructions, and subject to the supervision of said chief constable, serve the process of the said justices of the peace of the People's Court.

623. The Governor, by and with the advice and consent of the Senate, shall appoint twelve justices of the peace for each of the legislative districts of Baltimore City, to be selected as follows: One from each of the wards comprising each of said districts, and six justices of the peace at large from each of said districts, and shall further appoint fifty-three justices of the peace, and no more, from Baltimore City at large, who shall be appointed from such ward or wards as the Governor may elect or determine.

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624. Each of said justices of the peace, before entering upon the duties of his office, shall give to the State of Maryland a good and sufficient bond, with a surety or sureties to be approved by the Judge of the Superior Court of Baltimore City, in the penalty of five thousands dollars (\$5,000), with conditions that he will truly and faithfully discharge, execute and perform all and singular the duties and obligations of the office of justice of the peace, and that he will account for and pay over to the Clerk of the Court of Common Pleas and to the Register of the City of Baltimore, respectively, all fines, penalties and forfeitures and all fees or the portion thereof, which he is bound to account for and pay over to said respective officers; and that he will faithfully and truly account for and pay over to the person or corporation entitled to receive the same, all money belonging to such person or corporation which may come into his hands as justice of the peace.

625. It shall be the duty of the Governor, after the appointment of the justices of the peace provided for in section 623, to select from the justices of the peace so appointed one justice of the peace who shall be known as "Presiding Justice of the Peace of the People's Court," and four other justices of the peace who shall be known as "Associate Justices of the Peace of the People's Court." Said Presiding Justice of the Peace of the People's Court shall receive from the Mayor and City Council of Baltimore a salary of \$2,500 per annum, payable monthly, and each of said Associate Justices of the Peace of the People's Court shall receive from the Mayor and City Council of Baltimore a salary of \$2,100 per annum, payable monthly, and said justices shall receive no other compensation or fees whatever for the performance of any duties as justices of the peace. And said justices shall sit for trial of cases on each day (except Sundays and legal holidays) from the hour of 1 o'clock to the hour of 6 o'clock P. M., at such proper place in or near the Court House in Baltimore City as may be provided by the Mayor and City Council of Baltimore; and one or more of said justices, to be assigned by said Presiding Justice, shall be on duty from 9:30 o'clock A. M. until 12:30 o'clock P. M., for the purpose of issuing summons and performing any other duties, except the trial of cases. Cases may, however, be tried at any hour upon the joint consent of all the parties and of the justice.

627. Every writ, warrant, summons or other process issued by any justice of the peace shall be made returnable before the justice of the peace issuing the same, or before the Presiding Justice of the Peace of the People's Court; and any plaintiff or defendant shall have the right of removal to the Presiding Justice of the Peace of the People's Court, which said justice of the peace shall have the right to try any such case or to assign the same for trial to any other Justices of the Peace of the People's Court.

628. The said justices of the peace, other than the five Justices of the People's Court, when called out of their offices for the purpose of taking acknowledgments and affidavits may receive such compensation of their services, in addition to the fees prescribed by law, as the party requiring their services may allow them.

648. If any justice of the peace in Baltimore City dies, resigns or is removed, or upon the expiration of his official term his docket and papers shall be delivered to the Clerk of the City Court within thirty (30) days thereafter; provided, however, that this section shall not apply to any of the five justices

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of the peace assigned to the People's Court, whose dockets and papers shall be retained in the custody of the Chief Constable. A Justice of the Peace of the People's Court may issue process upon any docket of any justice of the peace in the custody of said Chief Constable that he might issue if the docket had been kept by himself, and may also enter "Satisfied" and judgment upon any such docket, upon the written order of the plaintiff, attested by any justice of the peace.

SEC. 3. *And be it further enacted*, That three new sections be and the same are hereby added to Article 4 of the Code of Public Local Laws of Maryland, title "City of Baltimore," sub-title "Justices of the Peace and Constables," three of them to follow immediately after section 625, as hereby amended, and to be known respectively as sections 625A, 625B, 625C, said three new sections to read respectively as follows:

625A. It shall be the duty of said Presiding Justice of the Peace to assign for trial to himself or to one of said Associate Justices of the Peace, all cases removed to him as said Presiding Justice of the Peace under the provisions of section 627 of this article, or returnable before any Justice of the Peace of the People's Court, and generally to supervise the work of the said Associate Justices of the Peace and of the constables hereinbefore provided for.

625B. Each of the justices of the peace provided for in Section 623 hereof, other than those specially provided for in section 623A, 625 and 630 to 638, inclusive, of this article, shall receive from the Mayor and City Council of Baltimore a salary of \$10.00 per annum, as full compensation for the performance by them of all duties of a civil, judicial nature; but said justices of the peace shall have the right to charge and retain all fees arising from the taking of acknowledgments and affidavits.

625C. The jurisdiction of all justices of the peace shall be as it now is or may hereafter be established by law. The fees and costs to be paid for the performance of their duties to all justices of the peace and constables, including all fees and costs payable to the Chief Constable, shall be as they now are or as they may hereafter be established by law; but all such fees and costs shall be payable only to the Chief Constable hereinbefore provided for, except in the cases of acknowledgments and affidavits taken by justices of the peace not assigned to the People's Court, and except costs, fines, penalties and forfeitures payable in criminal cases to the justices of the peace assigned to sit at the police station houses in Baltimore City.

SEC. 4. *And be it further enacted*, That all acts and parts of acts inconsistent with this act be and the same are hereby repealed.

SEC. 5. *And be it further enacted*, That this act shall take effect on the 2nd day of May, 1912.

CHARLES D. REID, Executive Secretary, Prisoners' Aid Association of Maryland, Baltimore.

New Law Governing Loan Brokers in Maryland.—The following bill was made a law in the last session of the legislature of the State of Maryland:

AN ACT to add three new sections to Article 56 of the Code of Public General Laws of Maryland, title "Licenses," sub-title "Brokers," to be known as sections 21A, 21B and 21C, defining and regulating the business of petty loan brokers.

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SECTION 1. *Be it enacted by the General Assembly of Maryland,* That three new sections be added to Article 56 of the Code of Public General Laws, title "Licenses," sub-title "Brokers," to be known as sections 21A, 21B and 21C, and to read as follows:

21A. Any person, firm, corporation or association applying for the same and paying the sum of \$10.00 may obtain a license for carrying on the business of petty loan broker. Petty loan brokers' licenses shall be issued by the Clerks of the Circuit Courts for the counties and the Clerk of the Court of Common Pleas of the City of Baltimore, and shall expire the first day of May next thereafter, but no abatement of said charge shall be made if said licenses are issued for less than one year.

21B. Petty loan brokers' licenses shall state fully the name or names of the person or corporation and of every member of the firm or association authorized to do business thereunder, and the location of the office or place of business in which the business is to be conducted; and in the case of a corporation shall also state the date and place of its incorporation, the name of its president or other managing officer and the names of its directors for the period for which the license is issued. And no person, firm, corporation or association so licensed shall transact or solicit business under any other name or at any other office or place of business than that named in the license. Not more than one office or place of business shall be maintained under the same license, and no loans or advances shall be made at any other place than that designated in the license. But in case of a removal the clerk issuing the said license may on application indorse thereon a transfer to the new place of business. With the date of transfer and from the time of such indorsement the new place so designated shall be deemed the place named and designated in the license.

21C. No petty loan broker shall exact, demand or receive of the borrower or borrowers, or of any other person on his, her or their behalf, in addition to legal interest as defined in section 1, Article 49 of the Code of Public General Laws of Maryland, any sum or sums either in the way of bonus or commission or otherwise, or as fees for the examination or valuation of property, examination of title, preparation, registration or recording of papers, acknowledgments, affidavits, insurance or other expense of any kind connected with such loan or the procuring thereof, or with any security given therefor, excepting that upon loans not exceeding \$500 bona fide secured by chattel mortgage or bill of sale covering chattels and not joined directly or indirectly with the sale of any merchandise or any other contract or transaction of any kind whatever, and repayable either in a single sum or in approximately equal installments distributed at equal intervals of time; petty loan brokers shall be permitted to make charges to cover the cost of procuring said loan, incidental expenses, examination or valuation of property or title thereto, preparation, registration or recording of papers, acknowledgments, affidavits and insurance as follows: On any loan not exceeding \$10.00, a total sum not exceeding \$3.00; on any loan exceeding \$10.00 and not exceeding \$30.00, a total sum not exceeding \$5.00; on any loan exceeding \$30.00 and not exceeding \$50.00, a total sum not exceeding \$6.00; on any loan exceeding \$50.00 and not exceeding \$100.00, a total sum not exceeding \$8.00; on any loan exceeding \$100.00 and not exceeding \$500.00, a total sum not exceeding \$8.00 plus 5 per cent. of the excess of said loan over \$100.00. If said loans shall be made repayable within less time than four months from the

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date at which said loan shall be issued, the charges shall be a proportionate part of those above set forth—that is to say, if the loan be for one month, then the charge shall be one-fourth of those above set forth; if for two months, two-fourths of those above set forth, and so on up to four months.

Interest and charges as above provided may be deducted when the loan is made. But it shall not be lawful in any manner or under any pretext whatever to divide or split up any loan, either directly or indirectly, for the purpose of exacting or receiving any charge, cost or expense of any kind in addition to or in excess of those so provided, nor shall it be lawful for any petty loan broker to hold more than one loan on which such charges or any part thereof are made from the same borrower or borrowers or any of them at the same time; nor shall it be lawful to make any charge for the renewal or extension of any loan on which such charges or any part thereof are made except lawful interest.

And a renewal fee not exceeding three per centum of the balance of loan extended or the amount of loan renewed when the period of renewal or extension is four months or more, and a proportionate part of said renewal fee when said period is less than four months; and any transaction whereby the discharge or settlement in whole or in part of any loan is accomplished by or results in the substitution or creation of other indebtedness between the same parties or between one of the parties and any person or persons in any way associated or connected with the other party, whether directly or indirectly, shall be deemed a renewal within the meaning of this section.

Every chattel mortgage or bill of sale so taken by a petty loan broker shall state fully the amount of such loan, the rate of interest thereon, the period or periods at or within which the same is to be repaid, the amount of money actually received by the borrower as a result of said loan, and the cost to the borrower.

The violation of any provision of this section shall be a misdemeanor on the part of the petty loan broker; and if such broker be a corporation or a non-resident of the State of Maryland then such violation shall be a misdemeanor on the part of any person participating therein as a representative or agent of said broker, and shall be punishable by a fine of not more than \$100 for the first offense, and for the second and each subsequent offense by a fine of not more than \$100 and imprisonment for not more than thirty days. In every case one-half of the fine shall go to the informer. And every loan in connection with which such violation shall have occurred shall be absolutely null and void. And the borrower shall be entitled to recover from the lender any and all sums paid or returned on account of or in connection with such loan.

CHARLES D. REID.

The Yankee Trial Justice.—In rural districts where mental culture was at a very low ebb the trial justice was considered a very important personage. I can see him now, as he was some years ago, moderator at town meetings, fence viewer, and general all round adjuster of the disputes and difficulties of the neighborhood. On a Saturday evening his rulings were discussed by the village loungers who made their headquarters at the grocery store, and arguments concerning his legal ability were waged with great vehemence. At times he would throw all law to the four winds of heaven and decide a case, not according to the evidence, but according to the reputations of the respective litigants for veracity and honesty in the neighborhood. If the reputations of the

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litigants were alike, then the decisions of the cases hinged on the reputation of their ancestors. In this respect he was like a Turkish Cadi, where the president of the court is at once court and jury. His manner of deciding cases strongly resembled the practice of the judge in Rabelais, who used "big dice for big cases and small dice for small cases."

The court room was usually located near the town hall, and the town constables and game wardens were wont to sit on the court house steps and gossip about the affairs of the neighborhood. Reputations were made and blasted. The man who gave short measure of wood and cider came in for universal condemnation, and the charitable who gave the village bell or helped to lighten the mortgage had his praises chanted and was hailed as a worthy successor to either Saint Peter or Saint Paul. Here the hardfisted money lender came in for personal abuse; the cider drinking husband and shiftless could not escape from the tongues of the village gossips.

But the court room! Language cannot adequately describe it. The prisoner was brought in by town constables and was burdened with manacles and shackles heavy enough for two-ton oxen. How the constables would swell with importance when they uttered those awe-inspiring words, "The Court." The country bumpkin was filled with awe at the gravity of the proceedings, but the dignity of the trial received a severe shock by the appearance of the judge in his shirt sleeves. After a few words of explanation from the judge excusing his appearance because he had just come from the hay field, the court was open and ready for business. Hay was neglected for Blackstone, and the haying was postponed in order that the legal interests of the village might not suffer. His knowledge was never a burden to him; he knew as much about legal procedure as he did about watch making. What a wide field is open to the novelist could he only unearth some of his judgments. He mixed replevin with trover, and in the administration of his lame law both parties suffered. He has passed into history and has left us no collection of his sparkling wit and humor.

What cared he for the opinions of higher courts and tribunals of justice? He was Squire Jones of Dawson, known and respected the whole country over, a terror to evil-doers, wife beaters and drunkards, honest in his eccentric opinions, but fearless in his administration of justice.

He lives now only in fiction, but the world has never known a more picturesque, mirth-provoking character than this old New England squire, with his lame law, cow-hide boots, slouch hat and eccentricities of character, who administered Yankee justice in the early days of our republic.

JOSEPH MATTHEW SULLIVAN, Boston.

Recent Legislation in Kentucky in Regard to Crime and Criminals.—By the act of March 7, 1910, provision is made for indeterminate sentences, in so much that neither the jury nor the Court will fix the term of years for imprisonment in the penitentiary of a person convicted of felony; but simply a maximum and a minimum limit will be determined by the sentence.

Up to 1910 the Court of Appeals could not reverse a judgment of conviction, no matter how flimsy the evidence upon which the verdict was rendered, if there was any evidence at all tending to sustain the verdict. By the Act of March 23, 1910, the Court of Appeals may reverse for an error in refusing to grant a new trial, so that a judgment of conviction may be reversed, because the verdict is flagrantly contrary to the evidence.

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By the Act of March 19, 1912, the procedure commonly known as "sweating" is made illegal; and no confession obtained by means of sweating can be admitted as evidence. It shall be deemed to have been obtained by duress if it be shown that the confession was made after the arrest of the party charged with crime and while he was in the custody of the law.

By Section 253 of the Constitution the working of convicts outside of the walls of the penitentiary is forbidden; but by Act of 1912 an amendment had been submitted to the people for their approval which if approved will authorize the use and employment of convict labor outside of the walls of the penitentiary in constructing and maintaining public roads and public bridges.

The law providing for parole of prisoners was so changed in 1912 as to provide that the clerk of the Court in which the trial was had shall furnish the board of prison commissioners a transcript of the record and a copy of a statement made by the judge of all facts proved on the trial which he deems important for the full comprehension of the case, together with the names and residences of the judge, jurors and witnesses. In case of application for parole or final discharge this record is to be considered as well as the defendant's record of deportment in the penitentiary.

By the Act of March 16, 1910, on the parole of convicts provision was made among other things for the creation of an office of Employment Agent to solicit suitable employment in advance of parole; to assist paroled prisoners in keeping employment and otherwise to supervise, counsel, aid and encourage paroled prisoners.

The Board of Prison Commissioners was re-constructed by the Act of March 1, 1912, and is henceforth to be appointed by the Governor with the consent and advice of the Senate instead of being elected by the legislature.

Laws as to the sale of intoxicating liquor in local option territories were made more stringent at both sessions (1910 and 1912), and by the Act of 1912 the county was made the controlling unit in forbidding sales of intoxicating liquors; so that while a precinct or a district or a city may forbid the sale of intoxicating liquor although it is permitted in the rest of the county, yet a county may forbid the sale of liquor throughout the county notwithstanding the vote of any precinct, town or district to the contrary, by act of March 14, 1912.

The sale of opium or its alkaloidal salts or their derivatives is forbidden except on a prescription; and only one sale shall be made on such prescription; but from this law certain preparations, such as Dover's Powders, are excepted.

By Act of March 5, 1912, matrons of jails in a city of the first-class are to be appointed, and station houses for the detention of female prisoners are to be designated; a jail visiting board of women is provided for; the matron is to be notified when a woman or child is imprisoned; and all searches of female prisoners are to be made in the presence of the Police Matron or her assistant.

By the Act of March 14, 1912, taking, directing or admitting to any house for the purpose of prostitution or lewdness, any female under the age of sixteen years is made a felony.

By the Act of March 18, 1912, the provisions as to pensions of policemen and the families of deceased policemen in cities of the first-class are decidedly modified.

FIRST CRIMINAL APPEAL BEFORE THE HOUSE OF LORDS

By the Act of March 14, 1912, provision is made for exhuming bodies where it is suspected that the death resulted from poison or other unknown illegal cause and for the employment of competent medical assistance in determining it.

These are the most important legislative acts at the two sessions in regard to crimes and punishments; although numerous misdemeanors have been created, such as permitting the use of public drinking cups.

C. B. SEYMOUR, Member of the Bar, Louisville, Ky.

First Criminal Appeal Before the House of Lords.—The January issue of *Law Notes* contained the following note:

"Advocates of a flexible procedure, and especially those who, like Senator Root, believe that the judges should be vested with wide discretionary powers in prescribing rules of practice, will find much to interest them in *Rex v. Ball*, [1911] A. C. 47. The case is interesting in the first instance as the first criminal appeal, in the strict sense of the word, to come before the House of Lords. The right of appeal in criminal cases, as is well known, has existed in England only since the passing of the Criminal Appeal Act of 1907, although it is true that points of law were brought before the higher courts, formerly by a writ of error, and under the modern practice by a stated case. The statute of 1907 not only established a Court of Criminal Appeal, but provided that if in any case the director of public prosecutions or the prosecutor or defendant obtains the certificate of the Attorney-General that the decision of the Court of Criminal Appeal involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, he may appeal from that decision to the House of Lords. When, however, this provision was taken advantage of in Ball's case, the court and counsel were confronted with the difficulty that no rules had been made governing the taking of such appeals, and the House of Lords was, of course, without any rules in respect to them. On the lodging of the certificate of the Attorney-General provided for in the act, the law lords were consulted. It was ordered that the appeals should be prosecuted subject to such standing orders as might be applicable thereto, and both sides were ordered to appear at the bar of the House on the following day, when counsel for the Crown (appellant) asked for directions as to the filing of documents. Lord Chancellor Loreburn said: 'In regard to the papers, I imagine what we want is the materials which were before the Court of Criminal Appeal, and we need not put the parties to the expense and trouble of printing.' The papers referred to were (1) printed petition of appeal to the House of Lords embodying the order appealed from and the certificate of the Attorney-General; (2) copy of depositions; (3) copy of exhibits; (4) lists of exhibits; (5) the indictments; (6) transcript of proceedings, including the evidence and the argument at the trial before Scrutton, J.; (7) notice of appeal; (8) certificate of Scrutton, J., and (9) transcript of the judgment of the Court of Criminal Appeal. In the certificate of Scrutton, J., the point of law to be argued was concisely stated as follows: 'The question to be raised is as to the admissibility on a trial for acts of incest on specified days in 1910, of evidence of the previous relations of the parties from 1907, including acts of sexual intercourse resulting in the birth of a child in 1908.' The papers having been placed before the House, and the arguments of counsel heard, the court on the same day arrived at the conclusion that the evidence in question was admissible, and reversed the order of the Court of Criminal Appeal, which had

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directed a verdict of acquittal to be entered. The dates of the various steps in the proceedings are interesting. The defendants were tried and convicted on Oct. 14, 1910. On Oct. 31 following, the arguments on the appeal were heard and on Nov. 8 judgments rendered thereon. The appeals to the House of Lords were immediately lodged, and on Nov. 28 the order for the appearance of counsel made. On the following day the directions above referred to were given, and on Dec. 15 the point of law was argued and judgment rendered. The case is perhaps even more interesting as an example of liberal statutory construction than as a lesson in procedure. The judgment of the Court of Criminal Appeal had quashed the conviction. It was thereupon held that the court had no power to keep the accused in custody or on bail pending the appeal to the House of Lords. After the reversal of the Court of Criminal Appeal by the House of Lords, an application, on behalf of the Crown, was made to the former court for an order restoring the conviction. It was contended on behalf of the defendants that the court was without power to render such an order. The court, however, was of a contrary opinion, Lord Alverstone, C. J., almost naively saying with reference to the defendants' contention: 'If that were correct the result would be serious, because the effect would be to allow a guilty person to go free. It would require very clear words to support such a contention. The language of section 1, subsection 6, seems to us to negative it. The appeal to the House of Lords under that subsection is not, as has been suggested, provided solely for the purpose of obtaining guidance in future cases. An appeal is allowed if the Attorney-General gives his certificate that the decision of this court involves a point of law of exceptional public importance and that it is desirable that a further appeal should be brought. So far as some principle may be laid by the House of Lords, no doubt the decision will be a guide in future cases, but it can only be a guide in cases where the circumstances are similar. The decision itself is a decision in the particular case. . . . In these circumstances it seems to us that the conviction has been in effect restored by virtue of the decision of the House of Lords, and we have power to give effect to that decision by directing that the original appeal be dismissed, and the conviction be restored, and we make an order directing the record to be amended in accordance with the decision of the House of Lords. The defendant who has surrendered will remain in custody, and a warrant will be issued under section 9 for the arrest of the female defendant.'"

Counsel for the defendants contended strongly before the Court of Criminal Appeal that the decision of the House of Lords was effective merely for the guidance of courts in the future. In this country efforts have been made to secure the review of decisions on questions of law made by the trial court adversely to the state in cases which result in a verdict of acquittal, such review not to cause a reversal of the verdict or subject the defendant to a second prosecution. Statistics to this effect exist in several of the states, and at the meeting of the Wisconsin branch of the Institute in 1910 the committee on trial procedure recommended the enactment of a similar statute. The constitutionality of such legislation is questionable. The Supreme Court of the United States in the case of *Muskraat v. U. S.* (219 U. S. 346), decided in 1910, held unconstitutional an act of Congress providing for the decision of moot questions by the court.

EDWIN R. KEEDY, Chicago.

SEDITION, LARCENY AND EMPLOYERS' LIABILITY IN ITALY

Work of the Criminal Courts in Pittsburgh in 1911.—The annual report of the District Attorney of Allegheny County, Pa., for the year 1911, which is printed in the *Pittsburgh Legal Journal* for January 20, 1912, contains much interesting information as to the work of the criminal courts in Pittsburgh. There were 3620 criminal cases disposed of during the year 1911, of which 2190 were indictments, 420 were informations, 605 desertion and non-support, 116 surety of the peace and 289 juvenile court cases. There were 1035 trials by jury, which resulted in 437 convictions and 598 acquittals. In 847 indictments and 276 informations there were pleas of guilty, 202 indictments and 31 informations were *nolle prossed* on motion of the District Attorney. 92 indictments and 107 informations were settled or withdrawn by leave of court; 5 indictments were dismissed and 14 quashed. There were 1669 individuals involved in the 1560 pleas and verdicts of guilty. Of these 1055 were sentenced, 351 paroled, 245 placed under a suspended sentence, and 18 were still pending. The grand jury was in session 115 days and disposed of 3144 bills of indictment, ignoring 1204 and finding 1940 true bills. There were 34 homicide cases disposed of, in twenty of which the offenses were committed in Allegheny county in 1911. One defendant committed suicide in the county jail, three were found not guilty by reason of insanity, and one was declared insane by a jury specially impaneled to pass upon his sanity. All four of these defendants were committed to the insane hospitals at Woodville and Marshalsea. There was one conviction of murder in the first degree, four convictions of murder in the second degree, and six plead guilty of murder and the court fixed the degree as second. One defendant was convicted of and one plead guilty to voluntary manslaughter; two were convicted of and two plead guilty to involuntary manslaughter, and twelve were acquitted. At the end of 1911 there remained 61 cases as compared with 381 at the end of 1910. Of these 25 were December, 1911, cases; 14 were 1910 cases and only four remained from 1909, all four being against the same defendant.

E. L.

Sedition, Grand Larceny, and Employers' Liability in Italian Law.—In the issue of *La Giustizia Penale* of the 1st of February, 1912, there is an interesting decision concerning what constitutes sedition under the Italian Penal Code. In the previous September, two persons had been arrested for whistling, yelling and cat-calling in the square in one of the cities of Italy while the band was playing the royal march, on the occasion of the celebration of the unification of Italy. The arrested persons were convicted and each was sentenced to ten days' imprisonment. They appealed from the decision of the lower court but their appeal was not sustained. The Appellate Court rendered the following decision: "Shouts and whistling directed by certain citizens against the royal march that was being played in public, especially when by such shouts and whistling, as in the present case, it is intended to contravene the sentiments and opinions of those who are in opposite political parties, thus making possible retaliation and disorder, constitutes sedition."

II.

A decision rendered on the 28th of December, 1911, in one of the courts of Italy is interesting to students of the English Common Law. Two men had taken away some grass that had been mown the night before by the owner of the land upon which it was then lying for the purpose of drying. They were

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arrested and brought before a magistrate. The question before the magistrate was whether this was petty larceny or grand larceny. The Code provides that if the act performed by the person upon whom the wrong was committed was a necessary act, that then the larceny committed by the individual is grand larceny. Was the act of the proprietor of the land in cutting down the grass and leaving the grass on the ground after he had cut it a necessary act? It was the contention of the defendants that the owner of the property should have taken more care of it. The district attorney, on the other hand, contended that long usage had made the act of the complainant an agrarian necessity, and that, hence the act of the defendants came within the provisions of the section of the Code before referred to. This contention was upheld by the Appellate Court.

III.

On the 21st of November, 1911, a decision was rendered which has some interest to American students of the law of Negligence, and especially of the law concerning Employers' Liability. There are provisions in the Italian Penal Code which make it obligatory upon employers to provide adequate implements, adequate places to work in, and adequate surroundings to workmen, and if an accident happens to any workman, and the employer does not, within three days, notify the authorities of it, the employer is subject to punishment. In this particular case there was a question as to whether the works upon which the men were employed were important enough to warrant the application of those provisions of the court. The court held that the reason for the legislature's passing such a law concerning Employers' Liability was to protect the lives and the health of the workmen who underwent grave risks, and that the character of the works and whether they were large or small did not matter. It was the intention of the legislature to prevent accidents by outlining the kind of scaffolding and other construction necessary to safeguard the lives of the workmen, and after an accident had unavoidably happened to make it easy for the workman to get his just deserts by making it obligatory upon the employer to report. In this case the employer did not report. The authorities, however, were, within the limited three days' time provided for by the Code, informed. But this, the court held, did not exonerate the employer, since it was the duty of the employer, himself, or of an agent of the employer to notify the authorities.

R. F.

Carnevale on Prosecution for Theft.—In the January-February number of *Il Progresso del Diritto Criminale*, Carnevale concludes his article on "Ancora dei Luisiti Morali Nella Repressione del Fauto." It includes his last three sections, in which he brings to end his proof of the need of a definite legislative limitation beyond which a prosecution for theft will not lie. It seems to us that the need is not one which calls for urgent action, though theoretically we cannot fail to agree with Carnevale. His proposition is that no action of larceny should be possible for the appropriation of articles of minimum value, such as an apple, a branch to make a walking-stick, etc. His proposition would only have a theoretical value in this country, but it would be valuable to have more men of the kind, who desire precision of thought in legislation and require the statute to reflect said juridical policy of the state.

He argues that there is no "animus rubandi" generally in the appropriation

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of articles of minimum value, and that, as every crime is objective and subjective, where the subjective element fails entirely, and the objective is absent to all practical purposes, no action should lie. This is Carnevale's ground. He meets the objection that often the repeated or malicious depredation of things of no value is a cause of real annoyance and loss, by holding that there should be a presumption against the "animus," which could, of course, be rebutted. He thinks that the rule is more in accord with the modern juridical ideal, which does not sacrifice the individual interest to general security or vice versa. And, he holds that his plan lends a sure protection to property without oppressing the individual, who may be careless or thoughtless in his appropriation of fruit or a branch. He thinks that the element of profit should not be the binding criterion, as it is vague and capable—perhaps unjustly—of being extended to cover all personal use. Necessity, absolute hunger, an old defense to larceny in Continental Law, he thinks is too restricted, as it does not cover the case cited above.

The real value and interest in Carnevale's article to Americans lies in a paragraph which seems to him not of great importance. We may well quote his words in full, for his opponent advances a view which the majority of Americans are inclined to favor, which tendency in these later days is increased by the attitude of certain important popular leaders. "In fact, the report of the Committee of the Chamber of Deputies (in considering the Code), states nevertheless, it can be well doubted if the elements of larceny are found in the appropriation of objects of minimum value; and sometimes the judges refuse to allow the prosecution. So they hold that there is no 'animo lucri' to bring a branch for protection against the sun as one walks. * * * These decisions *do not deserve* save in special instances and for special reason, *any censure*. But, such a disposition is a question for the judge, and cannot be determined by a general legislative enactment. (n. ccxxx). The committee (thus) refers the question to the judge, while our plan limits him. The committee says that he can temper his application of rigid principles to human acts with kindness in some way or other; he is free in his choice. This declaration shows grave symptoms of danger."

And to us it does. If such freedom had not been encouraged in little things, if the accuracy and settled precision sought by Carnevale had been held up for administration in this country, perhaps much judge-made law might have been avoided and the consequent pit of the recall.

In conclusion, we may add that Carnevale's article is one which can be read with profit by every lawyer. It has these advantages for every reader, entirely apart from its practical interest to statutes and makers of codes: In the first place, it will force on the reader's attention the correlation of individual rights and general security. In the second place, it will show him the conviction of an enlightened and active jurist as to the need for the legislative expression of law and for more judicial enforcement of the law as written. In the third place, it will show him the intimacy of law with sociology and philosophy, by illustrating the folly and impossibility of enforcement of a statute which is against popular feeling, and lacks the elements of a crime from the point of view of that branch of philosophy which deals with justice.

J. L.

TO PREVENT STRAW BAIL

The Public Defender.—No necessity exists for a public defender if the court will conscientiously protect the rights of the prisoner. Too much intimacy exists between members of the judiciary and the prosecuting attorney and in many cases I have seen a judge lose his impartial demeanor and act as a prosecuting attorney from the bench. Then again the judge loses his bearings and takes too much notice of the government and too little of the accused and his counsel. A judge is apt to determine the length of the sentence according to the good or poor opinion which he entertains of the accused or of his counsel, or both. The legal grist continues to grind with too much speed and the prison is the receptacle for the chaff with all of its blunders and imperfections. Where there is at the term of court a prevalence of a certain kind of crime the first culprit sentenced receives a lighter sentence than the last. The last culprit receives a severe sentence as a deterrent savoring of judicial vengeance, and the public feeling subsides, the wave is ebbing, and the conditions return to their former state. The heavy sentences are preceded by a judicial warning against the criminal class, and the thief caught in this legal vortex gets a severe sentence. A public defender is liable to become hardened just the same as the prosecuting attorney and the police; the defender might become too intimate with the police and district attorney to the detriment of the prisoner; he might become perfunctory in his habits and shirk work and facilitate the sentencing of the prisoner. Then again he and the prisoner might not agree as to the defence to be used in a particular; there would be that absence of confidence which should exist between attorney and client. This would obstruct justice instead of facilitating it. It is much better for the court to select competent attorneys to defend poor people who have not the sufficient means to employ counsel. Judges are to blame in many cases for the loose phraseology which they use in their charges to the jury. In many cases the jury looks to the court to take the place of a defendant's counsel in cases where the accused is unrepresented by counsel. There is too much tendency to believe that every person charged is lying; that every alibi is fictitious; and we have yet to hear of a judge committing a government witness for perjury. It is quite common for police to "stretch" the truth while testifying in police court cases where there is no counsel to question them. It is a notorious fact that they are more careful of their testimony where the accused has the means to employ able counsel. It is much better to have counsel changed frequently rather than to give one man the enormous power to decide upon the defence of prisoners of a large community. The public defender does not meet the above requirements, and it is a dangerous matter to intrust a public defender with a power that he might abuse. A public defender would be elected by the same vicious elements which elect and control many judicial offices; it simply gives some one an easy position with a salary, irrespective of the fact that he would be answerable to no one except, of course, the court, and it would only open the door to endless clashes in our courts of justice to the detriment of the peace and welfare of the community.

JOSEPH MATTHEW SULLIVAN, Boston.

To Prevent "Straw Bail."—"In a communication to Mayor Fitzgerald of Boston, the Finance Commission details the results of its investigation of methods employed in Suffolk County for five years with reference to bail bonds in criminal cases, in which extreme laxity has been found, and calls for a new

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system, which will mean the abolition of the offices of the present bail commissioners, and the prosecution of all sureties found to be straw bail.

"During the five-year period, 1906 to 1910 inclusive, 289 cases were dealt with, in which the penal sums of the bonds amounted to \$110,000.00, and on which up to September, 1911, only \$13,709.32, or about 12¼% had been collected. The explanations that were made fail, in the opinion of the commission, to account satisfactorily for the discrepancy. In some cases a surety who had settled for less than the amount of the bond was permitted in a later case to settle for less than the amount of the bond. In other cases persons who had no property were accepted as sureties. Thus in many instances justice was defeated. It has been customary for bail commissioners to accept sureties upon the mere statement as to the amount of property in the possession of the would be surety.

"It was found, too, by the commission that money collected on executions has not been paid to the City of Boston promptly, but has often been retained for unnecessary long periods by various officials connected with the sheriff's office. The law requires that fines, forfeits and forfeited recognizances be paid to the City of Boston by the sheriff within ten (10) days after the final adjournment of the court, with an account under oath of all amounts which were received since the last preceding sitting of the court for fines, forfeits and forfeited recognizances, and the names of the persons from whom they were received and against whom they were awarded. About two-thirds of the total number of payments to the sheriff have been delayed in transmission to the City of Boston. The commission makes the following recommendations:

"1. That hereafter a more careful inquiry be made as to the property owned by persons who offer themselves as sureties upon bonds of defendants in criminal cases.

"2. That the District Attorney assign one of his assistants to examine the statements made by the sureties and to prosecute vigorously all sureties found to be 'straw bail.'

"3. That a bill be submitted to the Legislature for the abolition of the offices of the present bail commissioners in Suffolk County and for the establishment in their place of a system under which better methods of examining sureties and collecting and accounting for money on such executions shall be provided.

"4. That the District Attorney and the Sheriff take steps to procure the payment of legal interest on the amounts of money retained for an unreasonable length of time after the date of its collection.

"5. That the District Attorney keep a record in his office of all executions issued by the clerk of the Superior Criminal Court and that he require monthly reports from the Sheriff's office as to collections made upon such executions.

"6. That the deputy sheriffs make weekly returns to the Sheriff of all money collected by them on such executions, and that the Sheriff cause the same to be paid over to the city within the first ten days of each month.

"7. That no such executions be given hereafter to constables, but that all be delivered to the deputy sheriffs."

From *Boston Evening Transcript*, March 4th, 1912. R. H. G.

Commission on Remedial Procedure in Alabama.—Governor Emmet O'Neal of Alabama, has appointed, of his own motion, a commission of thirty

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men composed of Judges of the Supreme, Appellate and Trial Courts and a dozen or more practicing lawyers, of whom he includes the writer, as one to carefully study Judicial Administration and Remedial Procedure in Alabama, and to report all needed changes in the administration of the law of this state. The writer has introduced a resolution that the remedy suggested by the American Bar Association be urged upon the Alabama legislature. It is as follows, to-wit:

"No judgment shall be set aside, or reversed, or new trial granted, by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties."

The writer has just concluded a service of more than ten years on the bench and can say without hesitation that the "presumption of error on appeals to the objecting and excepting" party has done more to defeat justice than any other one cause, and if such rule should be adopted as that suggested by the American Bar Association and now suggested by me to the Commission for adoption in Alabama, it will go a long way to restore the respect and confidence in the Courts that of late years seems to be lacking in the mass of the people.

WILLIAM HOLCOMBE THOMAS, Montgomery, Alabama.

Abuse of Judicial Discretion.—The prisoner has the right to be protected against the imposition of excessive bail. See United States Constitution, Amendments thereof, Article 8. A prisoner's rights are also protected by the provisions of the Massachusetts Bill of Rights, Articles 11, 12, 13, 14.

Judges seem to forget that they are the guardians of a prisoner's rights to the same extent as the state. A man is entitled to bail under our laws, and the magistrate who imposes excessive bail uses his office as an instrument of oppression. Ignorance and carelessness of the interpretation of the statutes by a judicial officer will bring about a miscarriage of justice. A prisoner who is able to obtain bail seems to get more consideration from the hands of the court. There is a tendency to place too much confidence in the testimony of police, and at the same time to place too little credence in the evidence of the accused. I could never understand why every judge is permeated with the idea that every "alibi" put forward by a prisoner is false; my experience has proven that a defendant is just as truthful as the police. The presumption that every person accused of crime is innocent until proven guilty is the veriest myth; experience has demonstrated that the burden is unjustly placed upon the accused; it is for him to prove his innocence instead of the government proving his guilt. It has become a common practice to look too lightly upon the prisoner's statutory rights and to help the state at the expense of the poor and needy.

JOSEPH MATTHEW SULLIVAN, Boston, Mass.

Regulation of Examination of Persons Charged with Crime.—The following is a copy of a bill that was drawn and introduced by Edwin M. Abbott, Esq., of Philadelphia in the Pennsylvania legislature in March, 1911. Upon it the recent act of the Rhode Island legislature (see this Journal, Vol. III, No.

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1. pp. 100) was based. The bill quoted below differs from the Rhode Island law in that it provides for the manner of arrest and detention of persons charged with crime and for photographing and measuring them:

An Act regulating the arrest, detention, examination, photographing and measuring of persons charged with a crime and providing a penalty for violation thereof.

Section 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same,* That hereafter any person charged with a crime shall immediately upon his arrest on the said charge be taken to the nearest lock-up or station house and shall not be removed therefrom until a formal hearing shall have been had upon the same before the magistrate, justice of the peace or alderman in whose district the said lock-up or station house shall be located; *provided*, That in cities of the first or second class where there is a central police court or hearing place the said person so arrested may be taken to that place; *and, provided further*, That in every case a copy of the charge shall be given to any person so requesting the same at either the lock-up or station house in the district where the arrest shall have been made or at the central police court or place of hearing to which he may be taken.

Section 2. That no force, subterfuge, intimidation, cruelty, threats, or other means shall be used by any detective, police constable, magistrate, justice of the peace, alderman, matron, turnkey, or other person to extract a confession or admission of guilt from any such person under arrest.

Section 3. That any confession or admission so obtained from any person under arrest accused of crime shall not be evidence to be used against the said person unless used solely by the said person's consent and the denial of the said person that any such confession or admission was given voluntarily will be sufficient to exclude it from being used as evidence against him at the time of his trial.

Section 4. That no photograph or physical measurements shall be taken of any person accused of crime until after he shall have been convicted of the crime of which they are accused; *Provided*, That this section shall only apply to persons under arrest who have never heretofore been convicted of crime.

Section 5. That all photographs and measurements of persons accused of crime who have subsequently been acquitted and who have never been convicted of any crime shall be destroyed within thirty days of the passage of this act, together with all plates, records and copies of the same.

Section 6. That violation of any of the provisions of this act shall be a misdemeanor punishable by a fine of one hundred dollars or imprisonment for two years either or both at the discretion of the court.

Section 7. All acts or parts of acts inconsistent herewith are hereby repealed.

R. H. G.

A Bureau of Criminal Statistics in Illinois.—Question of the validity of the passage of the new State Charities Act of 1909, having been raised by the decision of the Supreme Court in the University of Illinois appropriation case, Governor Deneen inserted in the call for the third special session of the forty-seventh assembly a provision for the re-passage of this act.

PROBATION IN DALLAS COUNTY, TEXAS

Re-passage meant a number of changes in the phraseology of the law and it was desired to insert some amendments relating to dependent children. The law being thus open to amendment, the State Charities Commission, following the action of the Illinois Branch of the American Institute of Criminology on this subject presented the following section, creating the State Bureau of Criminal Statistics.

"The State Charities Commission shall establish a Bureau of Criminal Statistics of which its executive secretary shall be the director. It shall be the duty of said bureau to collect and publish annually the statistics of Illinois relating to crime and it shall be the duty of all courts of Illinois, police magistrates, justices of the peace, clerks of the courts of record, sheriffs, keepers of lock-ups, workshops and city prisons or other places of detention, holding men, women or children under conviction for crime or misdemeanors or under charges of violations of the criminal statutes, to furnish to said Bureau annually such information on request, as it may require in compiling said statistics."

The House Committee on appropriations unanimously approved the amendment and the House adopted it without dissenting vote. The Senate, likewise, without dissent, gave its approval and the bureau has been created.

The executive secretary of the State Charities Commission has undertaken a study of the course to be pursued in establishing the bureau, realizing that the start which is made should be made right and upon such broad foundations that they will be sufficient to carry a superstructure of many years building.

It is realized that the statistics collected under this act will be of small value within ten or fifteen years. There is little accumulated experience in this country for him to draw upon in planning the work, but before it is commenced the assistance and advice of the most eminent authorities in criminal statistics will be secured.

A. L. BOWEN, Executive Secretary,
State Charities Commission, Springfield, Ill.

PENOLOGY.

Probation in Dallas County, Texas.—The study of dependency and delinquency, such as is offered by the Juvenile Court of Dallas County, has aroused public and religious organizations to greater activity. The work now being carried on in Dallas County by the City Federation of Woman's Clubs, the Presbyterian Mission Board, the Catholic Aid Society, the Methodist Settlement Home, the Jewish Society, the Episcopalian Home for Children, and others has had a decided effect in bettering the conditions among the dependent and delinquent children during the past year.

Any work to prevent an individual committing crime is a more important work than the punishment of an individual who has committed crime. Misdirected and sometimes maudlin sympathy must not be associated with intelligent, earnest effort to prevent crime. Every actual vicious criminal guilty of a repeated offence, had better be locked up for life, as the best thing for him and for society. I grant that punishment of those who commit crime is intended as a preventive measure. Wisely administered it is a justifiable method until we can find something better. Yet, the history of criminology will show that punishment of individuals is not a successful method of preventing crime. If it were we should have fewer people in jail every year. On the contrary, crime is on the increase. Each year adds to the inmates of nearly every reformatory

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in the country. There is no justification for the punishment of a human being unless it is necessary to help him, or (what is more important than to the individual) unless it is necessary to protect society, that is, to best secure to all individuals security of life, property, and the pursuit of happiness—any other view would be to admit the doctrine of vengeance as just, wise and humane. What we seek is justice, administered with wisdom, humanity and charity.

I do not know how to explain what may be done with the Juvenile Court and its offices better than to tell what has been done in the court in which I have had the honor to be connected for the last four years, and to refer to some of the principles underlying the methods pursued.

Its purpose is, of course, to prevent crime before crime is actually committed. To correct, aid and assist those who might be criminals, or who might do a criminal act, to avoid falling into either misfortune. It deals only with children and those responsible for the faults of children. It shows us we can not have good men and women unless we start with good children. Because of infancy both the constitution and laws of the state and public sentiment will justify methods of dealing with children which would not be tolerated in dealing with adults. It is believed in what statistics show, that the inception of crime is in the waywardness of misdirected children. It should take care of these children; it should help to form character. All of this is easily said. It is not so easily done. However, it can be done; and is being done in some cities. It is a strenuous life. It requires men and women of intelligence, tact, skill, and enthusiasm. It is not so much the law as the work. It is not so much the statute as those who administer it. But I do not want to underestimate the importance of the law, for without it we would be fearfully handicapped.

The Juvenile Court of Dallas county has, under the direction of Judge John L. Young and the commissioner of Dallas county, made wonderful progress. They are of one belief: "Anything that can be done for a child will possibly be the means of saving that child from a future known only to criminals." So interested are they in the results of the efforts now being made to better the conditions of the dependent and delinquent children of the county that they are now spending between six and eight thousand dollars each year seeking even better results than those recorded in the past.

Just what has been done in Dallas county for the wayward boy and girl could not be told in a day, nor could it be told in a week; therefore I will briefly state a few of the facts.

Over four thousand children have been brought before the court during the last four years. Of this number it was necessary to commit to industrial training institutions only five per cent, while homes were secured and children, both delinquent and dependent, placed as follows: White boys, 271; white girls, 157; colored boys, 54; colored girls, 32. Making a total of 514 children placed in good homes.

Seventy-two children have been returned to their parents, who have reformed and taken a new hold on life and have showed to the satisfaction of the court they now have a proper realization of their responsibilities.

Three hundred and forty-seven runaway boys and girls have been returned to their respective homes in various parts of the country.

We now have twenty-three children at the detention home.

PUNISHMENT IN PRISONS

I find that about eighty-nine per cent of the children brought before the Juvenile Court are the products of parents who are either mentally, physically, morally, or financially unable to care for them.

In closing I want to say that in my opinion, the best way to reform a child waywardly disposed, is first to understand them; have sympathy and patience with their faults, just as far as you can. In dealing with children we must be firm, we must be just, or as the average boy would say, "be on the square."

To better conditions among children I would urge that some consideration be given the "Mothers' Compensation Act," which is gaining much support in the East and North. This act provides that mothers with large families of children shall be granted pensions by the state, if they have no other means of support. In this way the mothers could stay at home and care for their children, giving them the proper training and she would not be forced to permit her children to run the streets while she is at work, striving to make both ends meet. I feel in this the state would save money now expended on its institution, and I am confident it would do away with a great part of juvenile delinquency.

Juvenile detention homes should be established in every city in Texas, and no girl or boy should ever be placed in a jail. Some action should also be started to make the Young Woman's Christian Association a statewide movement. The working girl must be protected.

W. G. LEHMAN, Probation Officer, Dallas Tex.

Punishment in Prisons.—Growing out of the fact that prisoners in state penitentiaries are entirely under the control of the wardens of such institutions, abuses have possibly crept into some administrations, not always, perhaps, because of the intention of the warden himself, but because being a very busy man with many cares, he delegates some of his powers to other officers, and the result has been that possibly in some cases prisoners have had to endure punishment without due investigation.

In order to prevent the possibility of this, Warden J. K. Coddington of the Kansas State Penitentiary, sometime after he came into office established the prisoners' court in a dual form. When prisoners request to see the warden in regard to business matters or treatment while in the prison, their names are taken by the cell-house officer and reported to the warden, who sees them once each week, listens to their requests and passes judgment.

This is one branch of the court. The other, and more unusual branch, is the court for prisoners under report for violation of the prison rules. The discipline of the institution is delegated by the warden to the deputy warden, and reports of the violations of the prison rules are made by the officers to the deputy. These are generally made in the evening at the close of the day's work or in the morning before the day's work begins. Since all prisoners are locked up at night, nothing more is done about the prisoner under report, except that when the other men go to work they remain in the cells. The deputy warden then takes up each case, having the written report of the officer before him, calls each prisoner before him and questions him in regard to the facts.

Sometimes the officer making the report is present, also. The proceedings of this court are taken down by a stenographer and afterward typewritten and sent to the warden, together with the judgment of the deputy warden. The

CONDUCT OF PRISONERS AND MAXIMUM OF THEIR SENTENCES

warden reviews and confirms or suggests different treatment. By this means every case where punishment is inflicted, or where a report is made is brought before the warden.

In many cases where there have been violations of the prison rules, but not flagrant, the deputy warden finds that a reprimand and some advice is all that is required, and the prisoner returns immediately to his work, feeling that he has had a hearing, that his word was listened to and that he has been treated as a man and not as a felon.

THOMAS W. HOUSTON, Chaplain, Kansas State Penitentiary, Lansing.

Conduct of Prisoners and Maximum of Their Sentences.—The growing favor with which the parole system is regarded has affected principally the minimum of the sentence received. This is natural, but the belief that there should be no minimum fixed by the court, but that this should be left entirely to the hands of the power that grants the parole, is rapidly gaining ground. On the other hand, there is a small body of prisoners not affected at present by the parole laws, who cause much trouble to those who are striving to improve conditions of penal servitude. These are prisoners excluded from the provisions of the parole laws because of the nature of the crime that has been committed, or because of previous convictions, or those to whom the parole law might apply but who are prevented from parole by their own violations of the prison rules. These expect no favors, being concerned only in serving their time and getting released on expiration. During the term of their servitude some of them are entirely amenable to reason and control, but a few of them, knowing that the time of their release is practically fixed and will not be affected by their conduct, sometimes refuse to work, and sometimes violate the prison rules unless restrained by actual force.

The presence of a small number of such prisoners in a large body of men who desire to be manly, prevents all from enjoying certain privileges which they might otherwise have, and when these few are discharged by expiration of their term they go out with anti-social ideas and are liable to further violations of the laws.

If the sentences could be made indeterminate both as to maximum and minimum, these exceptional cases could be handled more wisely. When an attempt is made to force such men to work, by punishment, the effect generally is to make them stubborn, and they are reduced to subjection only by suffering and weakness. The result has been in past times that some have been broken in body and have died or become insane.

If the laws could be so adjusted that the warden could say to such men: "You are expected to work in confinement for so many days and if you do not choose to work now you may be kept by yourself in healthy confinement, and you may stay there as long as you please, but the time so spent will be added to your maximum sentence." If he could say to those who wilfully violate the rules: "Such a violation calls for solitary confinement for a certain number of days; you will be so confined and the time so spent will be added to your maximum sentence." If a prisoner who made a wilful attack on a fellow prisoner or an officer, or otherwise violated the statutes of the state while within the prison, could be taken out and tried before the courts and given a second sentence to be served at the close of the current sentence—if these

THE FRONT OFFICE MAN

policies could be instituted and carried out, these few among prisoners who will not respond to liberal treatment could be dealt with without physical punishment or treatment which would injure their bodies or minds.

THOMAS W. HOUSTON.

Kansas State Penitentiary, Lansing.

Convict Parole Unconstitutional.—Judge Salzberger, in an opinion filed recently declared unconstitutional the act of 1909 under which convicts are released on parole. Unless this opinion is reversed by the Supreme Court it will render nugatory an act of the legislature which appears to have met general public approval and which has proven in many cases to be a humane and efficient measure. The judge found the law in conflict with the constitution on the ground that its title is defective. It has been the means since enacted of reducing the population of the eastern penitentiary very materially, the number now serving time there having been decreased from 1,500 to about 1,300. Since labor has no longer been permitted to be carried on in state's prison because of having been objected to by laboring men as competing unfairly with them, the penitentiary has become practically a large play house. This hardly seems fair or right because prisoners could be made by their labor large self-sustaining. As it is the taxpayers are compelled to go down in their pockets and pay for keeping the vast army of prisoners in idleness.

Pennsylvania might better adopt the Mississippi plan of putting her prisoners out on farms at work. This has proven highly satisfactory in the state mentioned. We do not know why it should not work well in Pennsylvania. We believe that our next Pennsylvania legislature should give this matter attention. There is no reason why able-bodied men serving out sentences in state's prison should not be made to earn their own living and thus remove the burden of their support from taxpayers.

F. B. C.

POLICE.

St. Louis Police to Have "Merit System."—Upon the suggestion of A. A. B. Woerheide, the board of police commissioners of St. Louis, of which he is president, adopted the following plan for selecting and maintaining the efficiency of the police force of the city: Civil service examination for all applicants for position of probationary patrolman; training of all probationaries and the establishment of a school of instruction; a system of efficiency marks to determine promotion; the creation of a medical division; and the establishment of a gymnasium. The outline of instruction includes a training in the rules and regulations of the police department, the law of evidence and preparation of evidence, elementary criminal law and the rights of officers in making arrests."—From *National Municipal Review*, Vol. I, No. 2. R. H. G.

The Front Office Man.—The detective or "plain clothes man" is supposed to be an expert criminal investigator and an expert in uncovering crime and matters of secrecy. The headquarters man is an officer who works his way up from the ranks and after years of police experience and routine. They report for duty at police headquarters every morning at nine o'clock and look over the arrests of the day before. A fly cop is supposed to know all the crooks whose pictures are in the rogues gallery, the fallen women, the thieves, and all crooked people in the town who are living by their wits.

AUSTRIAN CRIMINAL STATISTICS

The detective in our large American cities is supposed to know the extradition laws of the different states, the records of the top-notch crooks, the "big-mitt" men and "sure thing gamblers," pickpockets, flim-flam workers, and all other classes that compose the dregs of society. He must be able to play the "good fellow" and pretend to help out crooks in order to get information; do an occasional favor for a thief in order to get evidence to convict other crooks, and to hold a "sword of Damocles" over his "stool pigeons" because if they don't come across" with the information he can put them into court on some complaint and "settle" them on "general principles."

A thorough knowledge of the "slang" language, and the obscure and vague dialect of the thief, yeggman, pickpocket, burglar, shoplifter, is essential to the successful conduct of the work of a headquarters man, and a knowledge of the resorts for thieves is of the utmost importance in the preservation of the public safety.

JOSEPH MATTHEW SULLIVAN, Boston.

STATISTICS.

Austrian Criminal Statistics for 1908.—*Oesterreichische Statistik*, lxxxix Band, 4 Heft. Wien, 1911: from *Osterr. Zertsch, f. Strafrecht*, 3-4 Heft., 1912.

It is a matter for regret that in Austria as elsewhere all too frequently the authorities charged with compiling and publishing official statistics are so slow that the figures lose much of their prime interest and require an undue amount of correlation to make them of any wide use. However, in spite of their being four years old these Austrian statistics are of interest. The most significant fact they lay bare is the notable increase in criminality from 1907 to 1908, though the high figures of 1901-05 are only equaled in one or two minor instances. The following table will indicate the general movement:

CONVICTIONS PER 10,000 OF THE POPULATION OF LEGALLY RESPONSIBLE AGE.

A.				
	1901-5.	1906.	1907.	1908.
Felonies (<i>Verbrechen uberhaupt</i>)	19.10	18.69	17.61	18.98
Serious bodily injury	2.98	2.99	2.63	2.75
Theft and Accessory	8.64	8.52	8.30	9.23
Embezzlement	0.45	0.45	0.44	0.49
Fraud	2.02	1.72	1.49	1.60
B.				
Misdemeanors (<i>Vergehen uberhaupt</i>)	4.73	5.32	5.10	4.33
Bankrupt	0.78	0.86	0.82	0.67
C.				
Trespasses (<i>Ubertretungen uberhaupt</i>)	314.2	301.9	290.6	294.7
Wilful bodily injury	48.33	51.69	48.50	50.52
Theft	60.69	48.42	49.25	49.73
Embezzlement	4.22	3.81	3.41	3.79
Fraud	5.58	5.31	5.31	5.71

Professor Alexander Löffler points out that the favorable figures for 1907 correspond to a period of economic prosperity, especially to abundance of employment. Towards the end of 1907 and throughout 1908 economic depression ruled. The only apparent contradiction of the conclusion that unfavorable eco-

STATISTICS FROM BELGIUM

conomic conditions register themselves in increased criminality occurs in the figures for bankruptcy. But as Professor Löffler suggests the prosperity of the year 1907 and immediately preceding probably so strengthened the position of the tradesmen that they were able to weather the depression of 1908.

Another interesting fact is revealed by these statistics: brutal crimes show a not insignificant increase. It is frequently asserted that brutal crimes decrease in times of economic depression. As far as I have been able to construct Lombroso's position out of the many conflicting statements in his "Crime, Its Causes," etc., this is the general conclusion he maintains. Yet here, evidently, the principle fails.

Much more serious is the marked rise in youthful criminality revealed by the figures for 1908. From each 10,000 males 14 to 20 years of age, the following convictions are registered:

	14-16.	16-18.	18-20.
1907	17.45	38.26	58.
1908	18.42	42.69	63.40

These are by far the highest figures since 1902. The increase is specially marked in theft and its accessories. But in general the increase in male offenders 16-18 years old from 1907-08 was nearly 14 per cent. Professor Löffler concludes that youthful offenders in large cities tend more to crimes against property; those in rural communities and small towns to brutal crimes against the person and against morals. However true this may be as a general rule the figures offered to confirm the conclusion in this particular case are in such shape that they lend themselves to no valid interpretation whatever. Such statistics are more than a waste of good paper. They trifle with the time and temper of the student and offer easy materials for vain and fallacious conclusions.

A. J. TODD, University of Illinois.

Statistics from Belgium.—In order to set before us the kind of statistics we need to judge the efficiency of our methods, I will give a summary of the latest report from Belgium where statistics are carefully kept and reported. *Statistique judiciaire de la Belgique*, Ministère de la Justice, 1911. Larcier éditeur et Société Belge de Libraire. Pp. 445.

This report covers the Belgian statistics of administration of criminal justice and of criminals, statistics of prisons and prisoners, of mendicity and vagabondage, of conditional release, of police of strangers, of the insane, and of civil and commercial justice.

The criminal statistics are divided into two parts. The first part relates to the administration of justice; the other (criminal statistics) presents in figures certain aspects of criminality considered as a social phenomenon and not merely as an object of activity of the magistracy.

The report examines successively the divisions of the judicial organization in the order in which they are treated in the Code of Criminal instruction.

In the courts of first instance in 1910 there were 208,335 complaints, accusations and reports, or 277 per 10,000 inhabitants. The number has increased steadily from 72.95 per 10,000 in 1870. The report says that this fact does not indicate an increase of criminality but of new legislation. The new law of public intoxication (1887), of adulteration of food (1890), of measures relating to mad dogs (1905-1908), have notably increased the number of actions in the

STATISTICS FROM BELGIUM

primary courts. The granting of "rehabilitation" to convicts has become more common.

The number brought before police courts in 1910 was 157,831 (153,920 in 1906); 11.60 per cent were acquitted. The sentences given by justices of the peace are often brief, 93 per cent of those convicted without suspension of sentence were imprisoned less than 4 days; very few (2.59 per cent) were given the benefit of suspension of sentence to prison; while 56.96 cases of fine were suspended; 6,497 mendicants and vagabonds were "placed at the disposition of the government," that is, were sent up for colony treatment.

The law of 1891 (Nov. 27) provided that accused youths (under 16 years) may not be sentenced to fine or imprisonment, but must, if they have acted without "discernment," be reprimanded or placed at the disposition of the government; in 1910 there were 2,810, of whom 66 were so treated.

CORRECTIONAL TRIBUNALS.

These courts dealt with 44,388 new cases in 1910, and 14,675 holding over from the previous year; 14,219 were left to be disposed of at the end of the year. The whole number of accused who were tried was 59,207; of whom 9,599 (17.4 per cent) were acquitted; sentenced to imprisonment 21,830 (39.5 per cent); to fine 23,034 (41.7 per cent). Of those convicted 19.1 per cent were sentenced to terms of 8 days to 1 month, and 25.3 per cent for 1 month to 6 months; 1.5 per cent from 6 months to 1 year; 2.7 per cent one year or more. The previous record of delinquency increases the length of sentence.

Under the law of May 31, 1888, permitting suspension of sentence (conditional conviction), 4,735 out of 21,873 sentenced to prison and 11,566 of 24,331 sentenced to pay a fine received the benefit of the law. It is claimed that the courts have made free use of this law. Of supervision of those conditionally released and of efforts to prevent their recidivism, nothing is said. We think probation officers are an essential factor in a fair trial of such legislation.

A conditional sentence is nullified if the convicted person does not commit any crime or misdemeanor during a period of time fixed by the court, which may not in any case exceed five years. The favorite limits are three years and five years,—79 per cent of all in 1910. The courts differ radically in their customs on this point; there is no regularity. In 1910 those who "fell" were 10.08 per cent of the conditionally liberated.

Courts of Appeal.—The number of cases carried up has increased from 1,955 out of 31,341 in 1885 to 4,007 out of 44,326 in 1910; but the ratio of crimes under the penal code has diminished 128 per cent.

Courts of Assize.—In 1900 these courts tried 69 criminal affairs.

Courts of Cassation.—In 1910 rendered 664 decisions (413 in 1901).

Second Part: Criminal Statistics.

Here are presented both the number of individual convictions and the number of individuals convicted. The number of individual convictions in 1906 was 60,364; in 1910, 58,611. The number of individuals convicted was 54,597 in 1906, and 53,420 in 1910.

The statistics of crime by sex show in 1906, per 10,000 inhabitants, 117 male and 36 females; in 1910, 102 males and 34 females. The ratios do not vary widely from year to year.

STATISTICS FROM BELGIUM

Alcoholism is shown to be a great cause of crime; of 100 convictions in 1910, 11.59 per cent were first offenders and 44.46 recidivist offenders against the law against intoxication. 36 per cent of crimes and misdemeanors against public order were committed by drunkards.

Age.—The maximum of masculine criminality is reached between 21 and 25 years. The age of greatest recidivism is from 25 to 35 years. The maximum of feminine criminality is reached between 30 and 35 years. The figures show that the earlier crime begins the more apt it is to be repeated; precocity is an indication of criminal nature or of depressing surroundings, or both.

Number of individual offenses, divided by localities and months.

The statistics of individual infractions of law exhibit the intensity of criminality with first offenders and recidivists, and the relative height of criminality in the densely populated and smaller communes, the influence of seasons on criminality and the relative importance of each species of offense. The number of individual offenses tried in 1910 were 70,256, committed by 53,420 delinquents. First offenders were responsible for 34,359 offenses and recidivists for 35,877.

The number of offenses per 10,000 inhabitants in 1910 was: 123 in cities of 100,000 and over; 134 per 10,000 in communes of 25,000 to 100,000; 118 in communes of 10,000 to 25,000; 75 in communes of less than 10,000 inhabitants. Since 1906 the number has fallen from 104 per 10,000 to 95 per 10,000 in 1910.

Convictions for drunkenness were 22,052 in 1910.

Statistique Pénitentiaire.—The figures are given in two groups, one relating to the activities of the administration, the other relating to the prisoners.

Organizations of prisons.—The prisons are divided into the central prisons, which receive only convicts, and secondary prisons which keep not only convicts, but various categories of persons held under control of judicial or administrative authorities.

There are two central prisons, one at Louvain, the other at Ghent. The institution at Louvain is entirely cellular; that at Ghent has seven divisions on the "Auburn" system and only one cellular ("Pennsylvania" system). The departments in common are reserved for convicts who are regarded as unsuitable for the cellular régime on account of their state of health, and for life men who, after cellular treatment of 10 years choose the life in common, a choice being given by the law of 1870; convicts for shorter sentences who cannot be subjected to cellular treatment without danger to health; and short term convicts who cannot be kept in certain localities from want of cells.

There are 27 secondary prisons, all cellular except at Brussels (Minimes) and Audenarde. But these exceptions are to disappear, and all the secondary prisons are to be cellular. There is no central prison for women; the few women prisoners are held in the secondary prisons.

A special quarter, entirely distinct from those reserved for adults, is established in the central institution at Ghent for offenders under 18 years of age. Each sleeps in a cell at night, and all work together during the day. A quarter is also reserved for boys who cannot be managed in the reform schools.

Capacity of prisons.—There were in Belgian cellular prisons in 1910, 4,092

STATISTICS FROM BELGIUM

cells for men and 580 for women, in addition to infirmaries, disciplinary chamber, and debtors' cells. On the Auburn plan there are 1,262 places for men and 78 for women. The average population of the central prisons in 1910 was 740; of the secondary prisons 3,305 men and 328 women. In quarters of discipline and juvenile convicts 136.

During 1910, 108 children (51 boys and 57 girls) were incarcerated for "paternal correction," usually for short terms.

Antecedents.

	Males, 1,034.	Females, 121.
Not recidivists—1st previous conviction.....	397	33
2d " " 	260	17
3d " " 	195	13
Recidivists— 4th " " 	170	6
5th " " 	135	..
6-10th " " 	422	12
11-15th " " 	195	13
16-20th " " 	120	2
More than 20 " " 	170	7

Parentage.

	Males.	Females.
Children legitimate or made legitimate.....	3,011	216
Illegitimate	86	12
Foundlings	1	...

Literacy.

	Males.	Females.
1st degree, not able to read nor write.....	628	40
2d degree, able to read or write and read imperfectly..	1,764	135
3d degree, able to read and write well.....	518	52
4th degree, superior instruction.....	188	1

Cost of maintenance during 1910 per day was 1 fr. 60 c. (about 29 cents), found by dividing net expenses by total days of detention.

Persons condemned to cellular prisons for life may, at the end of 10 years, choose between the cellular and the common (Auburn) plan. During 1910, of 7 convicts (6 men and 1 woman) who were given this choice, 4 men and one woman chose to remain in the cell; 2 men chose the congregate life. 34 prisoners were transferred from cells to congregate prisons for physical unfitness, and 52 for mental unfitness, on the advice of physicians; but 8 were sent back on the same advice after a time. These transfers are significant in showing the value of a central administration which can remove a prisoner from one institution or department to another as changing conditions require. The medical direction is also a notable feature.

A careful record of the life history of each convict is kept which forms the basis for statistics.

Kind of offenses against the person—1501 men, 128 women.

" property —1597 men, 128 women.

STATISTICS FROM BELGIUM

Nature of penalties:

	Men.	Women.
Death penalty	120	14
Life terms	140	6
Hard labor for a term.....	253	15
Reclusion	79	12
Correctional imprisonment	2,505	180
Police incarceration	1	1

The crimes are classified by the place where they were committed.

Ages at the time of conviction:	Male.	Female.
Less than 16 years.....	2	..
16-18 years	56	3
18-21 "	307	15
21-30 "	1,266	67
30-40 "	867	68
40-50 "	381	47
50-60 "	163	24
60-70 "	50	4
70 and more	6	..

Conjugal Status:

	Male.	Female.
Unmarried	1,879	86
Married..... (Having children	828	85
(Without children	240	21
Widowed and (Having children	97	29
Divorced.... (Without children	54	7

Institution Work:

	Men, 599.	Women, 119.
A. For individuals	359	13
B. For Public Administration	287	24
C. Simple occupations	2,851	165
D. Apprentices	124	...
..	—	—
Total employed	4,220	321
Prisoners excused from labor for sickness, punishment, etc.	426	40
Prisoners unemployed from lack of work to be done ..	39	3
..	—	—
Total not busy	465	43
..	—	—
	4,685	364

The gross value of products in 1910 was fr. 474,086.31

Paid to prisoners employed in industries fr. 172,589.93

Paid to prisoners employed in institution work fr. 25,614.58

Convict Labor.—Labor is obligatory for those condemned to criminal penalties (forced labor, reclusion); those condemned to correctional incarceration are also obliged to labor unless excused by the government; labor is optional for police offenders and all others in detention. Labor is regulated by the law of Sept. 30, 1905. Prisoners are employed chiefly on state account. When there is not enough work of this kind contracts are made with manufacturers. The contracts must be approved by the administrative commission and the minister.

DECREASE IN PRISON POPULATION OF PRUSSIA

The prices are by piece or by day. Of the price received, the state retains three-tenths for expenses; of the seven-tenths remaining, one part goes to the prisoners in the following proportions;—five-tenths for the correctional prisoners, four-tenths for those in reclusion, three-tenths for those at forced labor; the surplus goes to the State. Prisoners who are not obliged to labor receive all the price of the work, less three-tenths for administrative expenses.

On the last work day of 1910, the employment of prisoners was as follows:

Schools.—In the central prisons attendance in school is obligatory for all prisoners, unless excused for good reasons by the director. In the secondary prisons attendance is required of those confined for 6 months and more who have not attained their 40th year, and of all young offenders. Of 733 incarcerated in the central prisons on December 3, in 1910, 506 (69 per cent) attended school; 393 (78 per cent) received advantage from the instruction; 113 (22 per cent) made no progress.

Disciplinary Punishments.—The total number of days of punishment in the central prisons was 1,498 or 0.55 per cent of the days of incarceration. In the secondary prisons the 15,516 men lost 1.29 per cent days of total detention term, and of the 570 lost 0.45 days. The 426 youths lost 0.86 per cent days.

Sickness.—In the central prisons the men lost from sickness 4.14 per cent of the days of incarceration (not, however, deducted from sentence); in the secondary prisons the loss was 2.27 per cent for men and 10.22 per cent for women; in the department of discipline, 1.54 per cent; in the department of youth, 0.28 per cent.

Deaths.—In 1910 the death rate in the central prisons was 1.22 per cent; in the secondary prisons, men 0.45 per cent, women 0.62 per cent; in the departments of discipline and youth 0.74 per cent.

In the central prisons there were in 1910 one suicide and 6 attempts at suicide. In the secondary prisons 12 on trial and 1 detained, and 1 convicted committed suicide; with 16 attempts.

Insanity.—It is frequently declared that the cellular system of Belgium produces insanity. In the central prisons 2.56 per cent of the prisoners were pronounced insane; in the secondary prisons, men 2.72 per cent, women 2.74 per cent; none in the quarter of those under discipline. But not all are declared to be so seriously insane as to be treated apart; if we take in milder cases the per cent rises to 3.85.

Conditional Release.—Of 4,589 prisoners conditionally released 3,823 (82 per cent) secured a definite discharge by good conduct, and 245 (5.3 per cent) were recalled; 594 (12.7 per cent) were still on probation. Apparently the results have been favorable; but the application of the measure is restricted; in 1910 only 202 requests were granted.

C. R. H.

(From a paper read before the annual meeting of the Illinois Branch, May, 1912.)

Decrease in the Prison Population of Prussia.—According to official statistics of penal institutions for the year 1909 (cited in *Blätter für Gefängniskunde*, vol. 45, 1911), the number of commitments to the penal institutions under the Prussian state shows a relative decrease since the year 1882. While in the year 1882, the number of persons thus committed per 100,000 of the civil population of over 12 years of age was 759.8, it was only 602.2 in 1908, which is equal to a decrease of 20.7 per cent. Since the year 1902 there has been a

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decrease also in absolute numbers. Whether the cause of this condition lies in satisfactory economic conditions or general social improvement or bears relation to the attacks made on definite prison sentences by the new school of criminal law is open to question. The fact is that the prison population shows a diminution. This is most pronounced in the penal institutions, corresponding to our state prisons. In 1882 there were 13,417 commitments to these institutions, equal to 42.3 per 100,000 of population, as against 7,780 commitments in 1908, equal to 17.6 per 100,000 of the population. This is a decrease of 58.4 per cent.

The ratio of decrease of state prison inmates in Prussia (Zuchthausgefängene) per 100,000 of population of 18 years and over was in

1880-81—5.82

1890-91—4.09

1900—3.04

1908—2.01

1909—1.86

What has brought about this decrease, whether there has been an actual diminution in the commitment of graver crimes or whether the judges are inclined to take a less severe view of offenses than formerly, is not disclosed by the statistics. It seems to be the fact that the judge rarely sentences persons to "Zuchthaus," unless the offenders have repeatedly been sentenced to loss of liberty. There also appears to be a decided attempt to keep the younger criminal elements out of the mayor prisons. Out of 3,874 persons (male offenders) sentenced to Zuchthaus, no less than 3,366 had previously been sentenced to loss of liberty, and of these, 802 from 3 to 5 times; 1,079 from 6 to 10 times; 854 from 11 to 30 times, and 31 times or more, no less than 75. It is of especial interest to note that the number of prisoners who are recognized as mentally inferior shows an increase year by year. One reason for this is found in the fact that officials, especially the medical, pay greater attention to mental conditions and know more about them. Experiments are being carried on to segregate the mentally inferior and subject them to special treatment.

JOHN KOREN, Boston.

MISCELLANEOUS.

The National Charities Conference.—The thirty-ninth conference of the National Conference of Charities and Correction will be held in Cleveland, Ohio, from June 12 to 19. A delegation of over 200 from Chicago and Illinois is expected to attend. Sherman C. Kingsley, director of the Elizabeth McCormick Memorial fund, is chairman of the section devoted to children's welfare work.

One of the notable features of the conference was a joint meeting between the committee on needy families and the committee on children on Friday, June 14. Mr. Kingsley will preside and the Funds to Parents act will be discussed, Judge Merritt W. Pinckney of Chicago favoring the law and Frederic Almy of Buffalo pointing out its difficulties.

Another important meeting will be the general session on Sunday evening, June 16. Mr. Kingsley will report on "Community Recognition of Children's Rights and Needs"; Miss Jane Addams will speak on "The Child at the Point of Greatest Pressure"; United States Senator William E. Borah of Idaho will talk on "Community Responsibility for Child Welfare"; and Miss Julia Lathrop

JUNIOR REPUBLICS IN ENGLAND

of Chicago, director of the Federal Children's Bureau, will lead the general discussion.

At the first general session on Wednesday, June 12, Raymond Robins of Chicago will be among the speakers on the topic "Immigration." On the following day Mrs. Joseph T. Bowen of Chicago will lead the discussion on "Housing and Recreation." At section meetings on Monday, June 17, Miss Sophronisba P. Breckinridge, James Mullenbach of the United Charities, and Miss Grace Abbott of the Immigrant's Protective League, all of Chicago, will be among the speakers, the topic being "Housing and Recreation." At another session to discuss "Standards of Living and Labor," Mrs. Medill McCormick and Mrs. Raymond Robins will speak.

At the section meeting, "Courts and Prisons," on Tuesday, June 18, Milton Goodman, John J. Sonstebj, and Benjamin M. Kaye, all of Chicago, will make addresses. At another conference on "Families and Neighborhoods," Mrs. William E. Gallagher and Louis F. Post, both of Chicago, will take part in the discussion.

The closing general session on the evening of June 19 will have Dean Walter T. Sumner of Chicago as principal speaker. The general topic will be "Sex Hygiene," and Dean Sumner's subject will be "Some Aspects of Progress in Sex Problems."

R. H. G.

Junior Republics in England.—As a result of a meeting held in London, England, rather more than a year ago, when a small committee was formed with power to add to their number, to suggest a scheme for founding a self-governing community in England on the lines of the George Junior Republics in America, the undersigned have formed themselves into an Executive Committee for that purpose.

Last year the committee received from the Earl of Sandwich the lease of a farm, rent free, in Dorsetshire, which will be available at next Michaelmas. A Preliminary Fund was raised to enable the prospective superintendent, Mr. Large, to visit the Republics in America, and to inquire into the problems, both psychological and administrative, that present themselves. As a result of Mr. Large's report, the undertaking can now take definite shape.

The general object is to found self-governing communities for delinquent boys and girls who at the present time are either sent to a reformatory or an industrial school, or put on probation. Voluntary cases will be accepted from parents or others in authority, of boys and girls who, although they may have eluded the police-court, are in reality indistinguishable in type from those who have come under its jurisdiction. Though, as far as possible, admittance will not be refused to the physically unfit, it will be obviously impossible to include cases which come under the character of epileptic or feeble-minded.

The success of the methods adopted by the George Junior Republic is proved by the fact that since its inception fourteen years ago seven others have been started on similar lines in America; the promoters of the movement in England therefore are satisfied that the time is ripe for a similar effort to be made in the Mother-Country. The principal results have been the formation of character, and the sense of citizenship acquired by the boys and girls at the Republics, and these qualities have been found to endure in after life. This is due to the system, which contains elements totally different from those of any other attempting to deal with the same problems. These are:

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(1.) Government by the citizens in all matters relating to the Republic itself, the laws being actually enacted by the citizens, based upon, and supplementary to the United States laws, with full judicial and executive powers.

(2.) A wage system, commensurate with the quality of the work performed, out of which a boy or girl pays for his or her maintenance.

Thus it will be seen that, with the solitary exception of the fact that there is always work available, the Republics are an *exact counterpart of the outside world*, while it is a *natural rather than an artificial community*, inasmuch as both sexes are included.

The immediate results of a self-governing and wage-earning system are:

(1.) To evoke enthusiasm on the side of law and order; (a) because the initiation of rules and regulations lies with the citizens themselves, and they are not imposed by superior authority; (b) because, as soon as the citizens earn their wage they at once exhibit the very natural desire for its security at the hands of the community, and therefore cease to have sympathy for the law-breaker. (2.) To introduce early into the life of a lawless child the maxim that "if any will not work neither shall he eat."

As may be imagined, it not infrequently occurs that a new comer refuses to go to work, with the result that, even if he does no worse, he soon becomes a vagrant and a nuisance to the community; in this case he is prosecuted by the citizens themselves.

A Scheme for England.—The existing farmhouse received from the Earl of Sandwich will become the nucleus of what will ultimately be in appearance a small village. Cottages, and the necessary buildings incidental to the life of the community will gradually be built, as the numbers increase, and funds allow. The maximum number of citizens in one community should not exceed eighty.

So far from attempting to copy American plans in detail, it is proposed, while retaining the fundamental principles necessary to the success of the scheme, to *adopt only those methods which harmonize with English life and English traditions.*

One of the essential elements for success is the grouping of the citizens in cottages in numbers sufficiently small to create the idea of home-life rather than barrack-life; under these conditions a boy or a girl has the best chance of becoming a personality rather than part of a machine. Good school education will be provided in addition to farm work, and workshops will be built for teaching suitable trades. Both boys and girls will have equal opportunities of learning that which is most suitable to their capacity.

The aim of the promoters will be first and foremost the training of individual character, to direct into good channels the natural energy which through bad environment or love of adventure has hitherto been misdirected, and, by means of the advantages of self-government coupled with a wage system, to create not only a sense of personal responsibility, but an appreciation of the value of membership in the community.

It is proposed at the outset to begin operations with a very small number of citizens, realizing that future success depends on a good start, and on the tone created in the initial stages. The citizens will be occupied with dairy farming and later, possibly, as their numbers increase with intensive cultivation of the soil.

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The cost of the whole undertaking will be approximately a capital sum of £15,000 for the cottages and other necessary buildings, including furnishing, stocking the farm, equipment, etc., and £4,000 a year for maintenance.

The above statement, which is in the form of a circular letter is signed by the following named persons:

George Montagu, chairman; Bertram Brooke, Cecil Chapman, Mary Elcho, Janet Johnson, Percy Machell, T. Mott. Osborne, Isabel Somerset, Harold Large, ex-officio; Evelyn Grey.

R. H. G.

Mr. McDermott's Report on Expert Testimony.—Following is the report of Lieut. Gov. E. J. McDermott on "Work of the Committee on Expert Testimony," which was given recently before the Kentucky State Bar Association:

"To the State Bar Association: At the meeting of the General Assembly this year, I introduced several bills to promote reforms in legal procedure. Senate Bill 190, to regulate expert testimony, passed the Senate by a vote of 28 to 2 and was reported favorably by a committee in the House, but never reached a vote there. Senate Bill 197, to require a special plea of insanity when that defense was to be relied on, was defeated in the Senate. Senate Bill 240, to regulate the grounds on which postponement might be asked in criminal cases when first called for trial, was defeated in the Senate. Senate Bill 241, to provide for a non-salaried commission of lawyers to recommend to the next General Assembly such amendments of the Civil and Criminal Codes as seemed to need amendment, was passed in the Senate by a vote of 30 to 0 and was reported favorably by a committee of the House, but never reached a final vote.

"The Civil and Criminal Codes were prepared by a commission established in 1871, two years before England, in 1873, completely altered its legal procedure. Our present Codes were passed in 1876 and took effect January 1, 1877. Though conservative England, from which we borrowed our cumbersome, over-refined, technical procedure, radically reformed that antiquated procedure, we made our new Codes more technical than they had been twenty years before.

"In 1877 cautious Germany also radically and scientifically reformed its legal procedure, and its Codes have been highly praised by such great lawyers and scholars as Maitland and James Bryce. Maitland said:

"This people, of pedants and dreamers, of antiquaries and metaphysicians, after discussing the history of every legal term and every legal idea, has made for itself what is out and away the best Code that the world has yet seen."

"But we have not yet made any systematic efforts to follow the reforms adopted in England and Germany, though experience there has shown that such changes greatly promoted the speedy and fair administration of justice. This association should, in my opinion, encourage a reform of this kind. It is a great undertaking. The foundations ought to be laid at once.

"Senate Bill 249, to simplify indictments, was defeated in the Senate. Senate Bill 251, to reduce the number of peremptory challenges allowed the defendant in criminal cases, passed the Senate by a vote of 27 to 3, and was reported favorably in the House, but never reached a final vote. Senate Bill 252, regulating admission to the bar, passed the Senate by a vote of 25 to 5, and was reported favorably in the House, but did not reach a final vote there. Senate Bill 257, which was intended to simplify, and practically to render unnecessary, bills of exceptions where official stenographers are appointed to take down all

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the proceedings in court, passed the Senate by a vote of 23 to 3 and was reported favorably in the House, but never reached a final vote there.

"My duties, as president of the Senate, were so onerous and exacting that I was not able to pay much attention to these bills in the House. I believe they should have been passed, and that the substance of these bills should be presented to the next General Assembly in 1914, for consideration, and that this association should make a systematic effort to perfect the necessary bills and to procure such support for them from the lawyers of the State as to make their passage successful when the General Assembly meets again.

"The whole country is aroused to the need of reform in legal procedure. The attacks which are being made upon the courts, in the magazines, in the newspapers and on the stump, are often unreasonable, and sometimes go beyond all proper bounds; but this agitation against the courts and the lawyers will continue and increase in acrimony, unless the lawyers, themselves, promote and carry out necessary reforms. I found that the Circuit and Appellate Judges approve these reforms, mentioned above, in the main, but there are some lawyers of influence who, from inertia or from a dread of all change, continually obstruct every effort to obtain for us the improvements which have been so successfully made, not only in England and Germany, but in some of the more progressive States of the Union.

"Judge Hobson wrote a bill to provide for a permanent commission of non-salaried lawyers to consider and to recommend to each session of the General Assembly such statutory amendments or new statutes as were needed to perfect our statutory law. This was a good suggestion, and the bill ought to have passed. I left my place in the Senate to advocate it, and finally, as there was a tie, I cast the deciding vote in its favor in the Senate, but it did not pass in the House. Such a commission, with the help of a secretary on a small salary, could be of great service to the bar and to the State, in gradually perfecting the statutes and the codes.

"As the session of the Legislature is limited to sixty days, there is not time to consider carefully the innumerable bills that are offered and to pick out and to pass bills of real merit. As many bills will affect other statutes, many inconsistencies and obscurities and errors creep into the almost innumerable provisions of our Kentucky Statutes and Codes. Any reforms of real value must be studied and advocated systematically by able and public-spirited lawyers here as in England and Germany.

"The American Institute of Criminal Law and Criminology, aided by a Committee on Criminal Statistics, is intelligently and earnestly advocating the collection of necessary criminal statistics in each State by State officers, so that our students, lawyers, courts, prison officers and legislators may better understand how to deal with the crime problem, how to make the law clearer and more efficient, and how to handle the criminal classes after conviction. Mr. John Koren, of Boston, the chairman of that Criminal Statistics Committee, who is also engaged in the work of the United States Census Bureau, has made clear the need of such reliable statistics for the information of the public and our lawmakers.

"I attach to this report a copy of Senate bill No. 190, on expert testimony, so that it may be published with your proceedings and be studied by the bar of the State before the next General Assembly meets. Its provisions may be

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briefly summarized as follows: The Circuit Court may prepare a list of qualified medical or surgical experts, and may, for its aid in that task, receive recommendations from the State Board of Health or any reputable body of physicians, surgeons, etc.

"Whenever expert testimony is to be used, reasonable notice should be given by the party intending to use it, stating briefly the nature of the evidence, and the court may appoint one or more experts to investigate the matter and be prepared to testify if called upon. Not more than three experts may be called without the permission of the court. If the experts named by the court are called on to testify, the party calling the witness shall pay such fee as the court may allow.

"A party may call experts not designated by the court, but, in that case, he must file, before the trial, a written statement showing the tenor of the expert evidence to be given and the name and residence or office address of the expert to be called; and the expert may be required to state what agreement has been entered into for a fee or payment made to him, and he shall not receive any larger sum or any other compensation than the sum so stated. A contract for a contingent fee shall be void.

"The subject of expert testimony is being discussed in all the civilized countries of the world. I have prepared a paper on this topic, at the request of the officers in charge of the eighth International Triennial Congress on Applied Chemistry, which meets in Washington and New York from September 4 to September 13 of this year. This organization has been in existence twenty-four years; but the meeting this year is the first ever held in America. The chemists are interested as much in expert testimony as physicians and surgeons. The evils of the present system in America are apparent to everybody. There are, however, two classes of objectors to State reforms on this subject:

"(1) Those who think that the legal practice now is as good as we can make it, and that any reasonable dissatisfaction is due to the inefficiency or ignorance of lawyers that examine or cross-examine experts, or to the lack of proper moral or professional standards in the callings of the experts, and that the medical and surgical and other professional societies must simply persuade all their associates to be good.

"(2) Those who think that expert testimony—especially the testimony of medical, surgical or other similar experts—is of very little value anyhow, and is given little weight by juries, and cannot be materially improved by legislation.

"These views are inconsistent and both are unsound. The ablest doctors and lawyers of our country are now eager to modify the present system. It is plain that many experts will uphold any theory for a tempting fee, but the lawyers who use such testimony are as blamable as the experts who give it. So long as experts merely prove the axioms or settled principles of their profession there is little cause of complaint, but when they undertake to apply their theories to the facts in any case the abuse becomes at once apparent. We cannot follow the rule in Germany of excluding cross-examination of experts because cross-examination is, after all, the best safeguard against falsehood and error.

"It is for the court to decide, in the exercise of a sound discretion, what experts are competent, but the standard is very low, and almost any man can prove, by his own flattering description of himself, that he is an expert. He may have abandoned his profession, or he may have only a theoretical knowl-

PROPOSED STATE BRANCH OF THE INSTITUTE IN MICHIGAN

edge, but he is still admitted as a competent witness. An expert witness, by the terms of his employment, is, under the present system, a partisan witness, and the partisan witness is always bad. In selecting ordinary witnesses the range of selection is necessarily limited.

"Few know the facts involved in the case, but, in the selection of experts, the range of selection is almost unlimited. A party will try one expert after another until he finds some one for a tempting fee who will, like Procrustes, distort or mangle his theories to make them fit his iron bed. Ordinary witnesses are allowed scant compensation, and it is possible to punish them for perjury, but there is no practical means of punishing an expert for swearing falsely as to his opinions or his theories. Under no circumstances ought an expert to be allowed to have a contingent fee, nor should he be allowed ever to have so large a fixed fee as would be likely to tempt him to distort his opinions or the principles of his science. Doctors will differ as lawyers will differ, because the science of neither is so exact as to forbid honest differences of opinion.

"The number of experts should be limited, because a rich or reckless litigant will otherwise have an unfair advantage over a litigant of ordinary means. Notice of the intention to use expert testimony should be required so that there may be no surprise to the injury of an opponent.

"The Judge, when given ample opportunity and when having a chance to consult competent and honest men in the practice of medicine, surgery or chemistry, can more easily discover the relative merits of experts than a jury in the excitement and heat of a trial.

"At present, a skilled, high-toned physician or surgeon does not want to be put in competition with a shrewd, but unscrupulous expert, who frequently appears in court to earn a fee because his opinions can be readily adjusted to suit any emergency. The ablest physicians and surgeons of the country rebel against the system that brings upon their profession an odium that is due to the combined efforts of untrustworthy experts and over-zealous lawyers in a desperate case.

"I am told that, a few months ago, two experts testified for a female plaintiff in a damage suit, and stated that they had removed all of one ovary and part of another, and also the Fallopian tubes, and that she could never become a mother. Of course she suffered greatly over such a painful doom. That was in March. She recovered damages. In June, however, the predictions of her physicians were disproved by the appearance of real evidence—by the birth of a baby. Of course, the indignant defendant is asking for a new trial. This is not an uncommon sample of the sort of testimony on which juries must act.

"Any regulation on this subject should, of course, be well considered, but the need of reform is great and the demand is urgent, and we should do our part to pass such an act as will give reasonable protection to all litigants; that will give reasonable protection to honest experts, and that will protect the lawyers and the courts from the evils of the present corrupting system."—From *The Times*, Louisville, Ky., July 11, 1912.
R. H. G.

Proposed State Branch of the Institute in Michigan.—The following is an informal report of a meeting held in Detroit, on August 9th, for the purpose of organizing a state society of the American Institute of Criminal Law and Criminology:

NATIONAL PROBATION ASSOCIATION CONFERENCE

On the invitation of Mr. H. M. Bates, Dean of the Department of Law of the University of Michigan, and a member of the Executive Board of the American Institute of Criminal Law and Criminology, and of Mr. Clarence A. Lightner, of the Detroit bar, a conference of men interested in the formation of a state society of the institute was held at the University Club in Detroit, Friday, August 9, at 1:00 P. M.

Among those present were the Honorable H. H. Hulbert, Judge of the Probate Court, and in charge of the Juvenile Court work in Detroit; Mr. Tracy McGregor, of the McGregor Institute; Mr. David E. Heineman, city controller of Detroit; Mr. G. D. Pope; Mr. W. H. Venn, probation officer; Mr. E. W. Pendleton, of the Detroit bar, and Mr. Harry Nimmo, of the Detroit *Saturday Night*.

Messages from many judges of the state, clergymen, and others interested in social work, were sent through Mr. Lightner.

Mr. Nathan W. MacChesney, of the Chicago bar, and president of the American Institute for the year 1911, very generously took the time to attend this meeting and to outline the scope and purposes of the national organization and the work already accomplished. This was supplemented by an informal statement by Mr. Bates.

After a general discussion, it was decided to authorize Mr. Bates, as chairman of the conference, to appoint a committee of fifteen members to issue a call for a meeting to be held early in the fall for the purpose of organizing a state society. This committee will be appointed at once, and it will make up a list of men and women in different callings, who are likely to be interested in such a movement, and will invite them to the meeting to be held probably either in Detroit or at the University of Michigan in Ann Arbor.

HENRY M. BATES, Dean of the Department of Law, University of Michigan.

The Pennsylvania Branch of the American Institute.—On May 22, 1912, the second annual meeting of the Pennsylvania Branch of the American Institute of Law and Criminology was held in Price Hall, Philadelphia. This Society is one of the pioneers among state societies, and at this meeting the programme was outlined for the year's work. Resolutions were passed appointing committees to arrange for meetings in connection with kindred societies in the autumn, and the date of the next annual meeting was fixed for May, 1913. Edward Lindsay of Warren, Pennsylvania, was elected president; Judge Ralston, of Philadelphia, and Professor Lichtenberger, vice presidents; John Lisle, secretary, and A. P. Richardson, treasurer.

We may add that the recognition and development of state societies aids the national society greatly in its work by furnishing data and by arousing interest in matters which are local in their application though universal in their bearing upon reform, both in substantive and in practice. J. L.

National Probation Association Conference.—An interesting program on probation and the administration of juvenile courts was observed by the annual conference of the National Probation Association held in Cleveland, from June 11 to 15, inclusive. The list of speakers was representative of various parts of the country. The subjects discussed included these: The need of a Federal probation law; the judicial and probationary treatment of domestic relations

THE PROBLEM OF COMBATING SUICIDE

cases and of drunkards; the collection of restitution and instalment fines from adult probationers; the organization and administration of juvenile courts; the temporary detention of children brought before such courts, and methods of dealing with juvenile probationers. There will also be a meeting on mental and psychological examination of defendants, and one on judicial records, reports and statistics.

The conference met under the presidency of Judge George S. Addams of Cleveland. The report of the standing committee on juvenile courts and probation was made by Bernard Flexner of Louisville, and that on adult probation by Frank E. Wade of Buffalo. The meetings were held in conjunction with those of the National Conference of Charities and Correction.

A. W. T.

The Problem of Combating Suicide.—(Prof. Dr. Giulio Q. Battaglini, *Schweizerische, Zeitsch. für Strafr.*, 24th year, No. 2.) The problem of this article is, Can the criminal law act effectively against a person who attempts suicide or one who aids in the attempt or has previous knowledge of it?

The practice of confiscating property to deter was abandoned because ineffective and obviously unjust to the relatives of the suicide. Fining or imprisonment of would-be suicides would have practically the same effect. The attempt in England and America to make attempted suicide a misdemeanor has been ineffective. The Italian law does not attempt to punish suicide or the attempt at suicide, but holds guilty the one who aids or has previous knowledge without an attempt to prevent.

The threat to punish can have no deterrent effect on the suicide, because he is planning to get beyond the state's power to punish, consequently it is not an act for legal consideration. It is rather a question for morals or social ethics. The writer argues for the right of the individual to departure from a given habitation by suicide as well as by migration. A country cannot well compel a man to stay in it. Consequently no legal reaction should follow an act of suicide or the suicidal attempt.

On the other hand, the legal attitude ought to be one of attempting to relieve conditions leading to suicide as far as possible. Among such opportunities for preventive action the writer mentions the suppression of the suggestive details in the press reports of suicides. There is no longer any question in regard to the power of suggestion over the mind already half disposed to self destruction. Such repression has been advocated by private bodies in several countries. The legal prevention of the sale of poisons, except on the order of a physician, accomplishes little on account of the wide commercial use of poison in the form of insecticides, etc. The prohibition of the sale of dangerous weapons accomplishes little as long as men work with dangerous tools. Society cannot well prohibit the sale of rope or the building of two-story houses or prevent the use of illuminating gas. The thousand and one opportunities offered by the country itself and the forms of industry make suicide easy to the man who has determined to die. The state can only prevent to the extent of relieving itself from the charge of negligence. Education could do much and the state might help materially in affording abundant opportunities for healthful recreation and social diversion. The suppression of suggestive literature would certainly be a legitimate field for state action.

PHILIP A. PARSONS, Syracuse University.

REVIEWS AND CRITICISMS

MITTEILUNGEN DER INTERNATIONALEN KRIMINALISTISCHEN VEREINIGUNG. 18. BAND. HEFT I. (Bulletin de l'Union Internationale de Droit Pénal. Dix-huitième volume. Livraison I. Von Dr. Ernst Rosenfeld. J. Guttentag, Berlin, 1911. Pp. 498.

It is important that our readers' attention should be especially called to these "Mitteilungen der Kriminalistischen Vereinigung," for they are a mirror in which we can see a practically complete reflection of the criminal law reform movement in all countries. Here, better than anywhere else, we can obtain an idea of the battles that are fought out in this realm and of the victories that are won. Here the investigations of a large number of gifted and industrious scholars are brought together and examined as to their practical value. Our horizon broadens here, expands far beyond the limits of our own country and we are thus enabled to compare, to distinguish, hence to know.

The present eighteenth volume contains two original pieces of work: (1) a very instructive examination of "Places of Detention in England," that is, of the detention of juvenile offenders in England, by Dr. Jur. Behrend, and (2) a study of the "Anwendung der bedingten Strafaussetzung in Frankreich," by Marcel Oudinot (L'application de la loi de sursis en France). The volume is accompanied by a supplement containing a German translation of the Japanese military penal code, by R. Fujisawa, which we mention particularly because it seems to us that the military penal codes of the great armed Powers, like Germany, Austria, etc., do not receive sufficient attention from our reformers. Whatever may be said against their relative harshness, the economy of the means used might well serve as a model in some respects for our penal codes—especially for the reform of our jury trials and for the acceleration of the whole criminal procedure.

The largest portion of the book is naturally devoted to discussions of the two great drafts of a new penal code in Austria and Germany. That these two drafts signify a victory for those ideas that the "International Union of Criminal Law" has advocated for upwards of twenty years cannot be doubted, for they are, on the whole, an unexpectedly rich fulfillment of the demands relative to criminal policy that are put forward by this Union. There we find the hotly disputed conditional sentence and the "Rehabilitation" which has come into prominence only within recent years. There we find regulations pertaining to the protection of society from the dangerously insane. There too, "defectives" or "partially responsible" persons are especially treated and, at last, in dealing with juvenile offenders not only punishment but training is made to play a large part, while idlers and drunkards are subject to special measures. What is most striking in both the drafts, however, is the hopeful and certain confidence displayed in the strength and capabilities of the judges of the criminal court, the margin allowed them for the exercise of their own judgment, in a word, the absence of bureaucratic timidity. The defects of these drafts, which appear with particular clearness in these equally learned and brilliant discussions, cannot be dealt with here today, but must wait until the drafts themselves are reviewed.

North Easton, Mass.

ADALBERT ALBRECHT.

REVIEWS AND CRITICISMS

MATERIALEN ZUR LEHRE VON DER REHABILITATION. Von *Dr. Jur. Ernst Delaquis*. J. Guttentag, Berlin, 1907. Pp. 75.

The idea and practice of rehabilitation plays practically no part in American criminal procedure and from this it might be argued that we should find nothing of value in monographs upon this subject. But this is not true, for a point of some interest is at once discovered by the very fact that there is this great difference between continental criminal procedure and our own. Parenthetically, it might be stated that the situation in England is much the same as it is in this country—there is very little forfeiture of the rights of citizenship or property following the completion of a prison sentence.

In Germany and in France there are many limitations of personal rights as the result of conviction of offenses against the law. This varies in the different German states and some of the differences are emphasized by Delaquis. As would be naturally supposed, this phenomenon is most striking in connection with punishment under the military code. On account of this personal forfeiture being such a factor of the punishment in these countries there has come about a definite movement in favor of restoration to the complete rights of citizenship, which is found more or less expressed in various criminal codes. Delaquis insists that it is a necessity for the prevention of recidivism. He quotes Berenger, who said to the French senate in 1882, "Of all the resources which penological science has placed at the disposal of the law for the amendment of offenders, there is nothing more efficacious nor more active than the hope of rehabilitation. At the same time, there is nothing more moral, more elevated, or more conformable to the ideas of justice and humanity."

One is struck by the great contrast between this state of affairs and our own, where we hear nothing of any such necessity. This would seem strange since, in contrast to English procedure, many of our states prescribe the loss of the right to vote after conviction of a number of offenses. There may be several reasons for this, principally social. We have a greater fluidity of population; we have not the continental system of general citizen registration; we are comparatively primitive in our methods of recognition and recording of offenders; we have very little interchange of data between our different criminal agencies. It is more than likely that when many offenders have served their sentences they assume different names, change their abode, and become to all intents and purposes citizens again. We have no method of checking and preventing this. It may well be from these various causes that we here have no demand for this most worthy measure of restoration to the rights of citizenship.

Delaquis makes a presentation of the fundamental theories underlying rehabilitation, and also gives a summary of the status of this measure in various countries, and finally pays some attention to statistics and bibliography.

Chicago.

WILLIAM HEALY.

ESSAI D'UNE THEORIE JURIDIQUE ET MEDICO-LEGALE DE LA PREMEDITATION CRIMINELLE. Par *Visair Cornatano*, docteur en droit et en médecine. Avec préface de M. Garçon. L. Larose and L. Tenin, 22 rue Soufflot, Paris. Pp. IX, 163.

During the last few years the theory of criminal premeditation has been made the object of numerous studies and discussions, partly because of the

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peculiarly dangerous anti-social character of bands of criminals, and partly because criminal jurists have suggested regarding premeditation as an aggravating circumstance justifying more rigorous punishment than would otherwise be warranted. Indeed, premeditation is in some systems of criminal jurisprudence the distinguishing mark between crimes and misdemeanors of varying grades of seriousness. The International Congress of Criminal Law has given some attention to the subject, but the problem has as a rule been approached from a rather theoretical point of view.

In the preface to the present little treatise, Professor Garcon, of the Paris Law School, suggests that a distinction should be drawn between premeditation, on the one hand, and obsession or fixed ideas, on the other hand. Premeditation, he declares, is a phenomenon of normal psychology; whereas obsession is morbid and belongs to the domain of psychiatry. "Unquestionable evidence," says this distinguished criminologist, "may prove that the defendant thought of his crime long before committing it, and that the act was accomplished only after long deliberation. Hence premeditation would appear to be conclusively established. But may not the very same facts be explained quite as well by pathological obsession? The idea of murder may have early entered the mind of a degenerate and taken its root there; he may have fought courageously against it, and for a long time the reasons against it may have prevailed; yet if he commits the crime, it will appear as the result of long, calm deliberation. For if the fixed idea of murder later becomes stronger than the healthy impulses which resist it, and the man's power of inhibition surrenders, he commits the act, which is then interpreted as deliberately conceived. And if finally the murderer experiences the relaxation that follows the accomplishment of the act, he is put down as guilty of the cynicism that marks the hardened and remorseless offender. Thus the same facts and the same testimony would indicate, according to one interpretation, a morbid condition in which all penal responsibility is lacking, or, according to the other interpretation, an aggravating circumstance that may lead the offender to the scaffold."

It is clear that such a problem as this can be best dealt with by one who is familiar both with criminal law and with mental diseases—a combination of qualifications which is possessed by the author of the present study, who reaches the conclusion that "premeditation, as an aggravating circumstance in cases of murder, cannot be subjectively justified, and should have no place in a sound system of criminal jurisprudence."

The study begins with a historical sketch of the doctrine of premeditation in the criminal law of the middle ages and of the principal modern nations. The Carolinian code in 1523 provides that simple homicide shall be punished by death, whereas premeditated homicide is punishable by death accompanied by horrible tortures. From that time forward the distinction becomes customary, though not always clearly drawn. But the Russian code of 1866 and the Portuguese code of 1884 eliminate it almost entirely; and the Russian code of 1903, now in force, does away with it entirely. Briefly summarized, the history of the distinction is this: The ancients made no difference between premeditated murder and murder without premeditation, both being subjected to the same penalty. The idea of premeditation, introduced mainly during the middle ages and the sixteenth and seventeenth centuries, has been abandoned in a number of codes promulgated in the latter part of the nineteenth and the beginning of the twentieth centuries.

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Then follows a careful discussion of the various doctrines concerning premeditation that have been advanced by the leading criminological writers from Beccaria down. According to Beccaria, in cases of simple homicide or manslaughter the criminal gives no thought to concealing the traces of his misdeed; whereas in case of premeditated homicide or murder everything is arranged in advance: the offender carefully selects the means and methods of action and tries to conceal his crime and to avoid its consequences and prevent his own discovery. This additional peril for society at large, caused by the difficulty which society has in avenging or defending itself, justifies a severer penalty than that of simple homicide. According to this conception, premeditation is the index, not of criminal wickedness in the offender, as some psychologists and criminologists would have us believe, but of a more serious social danger.

Rossi carries the theory of premeditation a few steps further, basing his scale of punishments upon the moral state and the perversity of the delinquent. "Premeditation," says Rossi, "discloses a great danger and causes just alarm. What will restrain the offender who, after having deliberately considered the obstacles that should deter him from crime, has nevertheless passed over them all for the first time? . . . Whereas in a sudden offense the idea of crime has merely traversed the mind of the agent, through a cloud of passion, in the case of premeditated crime he has looked the offense squarely in the face." Romagnosi's further development of the theory of premeditation recognizes in substance that simple homicide and premeditated homicide are similar from a quantitative point of view; the direct effect on the community is the same; but they are different from a qualitative point of view. Criminal tendencies being more accentuated in the second than in the first, it should be more severely punished.

In the second half of the nineteenth century, however, a new theory arises in opposition to the orthodox or classical conception. John, writing in 1871, undertakes to show that it is impossible to determine clearly where the simple will to kill terminates, and the element of premeditation begins. It would be more accurate to say, according to John, the murder is committed with more or less of premeditation; and in that case, what degree of premeditation is requisite to constitute premeditated homicide? The classical theory received another blow in 1875 at the hands of Holtzendorff, who sought to prove that the nature of culpability lies not in the circumstances of an act, but rather in the motives that have caused it; the man who kills out of cupidity, for the simple object of gaining some coveted pleasure, is much more culpable than the man who has been insulted and kills to avenge his honor. Moreover, quick-thinking men of sanguine temperament, will strike at once, under the empire of the first impulse; others with slower faculties and phlegmatic temperament, feel an insult less keenly and yield less readily to the impulse of vengeance. If we attach due importance to the motives of the crime, furthermore, it becomes apparent that a simple homicide may denote, on the part of the offender, a much more perverse nature than in some cases of premeditated homicide. Thus premeditation furnishes no sure criterion.

The positivist school of criminologists also rejects premeditation as an aggravating circumstance, but for reasons different from those employed by Holtzendorff. One of the founders of the school, Garofalo, asks the question, "Is the offender who commits a crime after premeditation more to be feared

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than one who commits it spontaneously?" and answers negatively. A third school—*terza scuola*—started in Italy with Alimena, occupies a sort of midway position between the preceding. Alimena distinguished four types of homicides, constituting a scale of culpability and justifying corresponding grades of punishment. (1) Passionate sudden homicide, such as that which a husband commits upon discovering his adulterous wife in flagrant delict; (2) homicide committed in consequence of a resolve formed before the act, but under the influence of a persisting passion—as in the case of Othello; (3) sudden homicide, but committed in cold blood and voluntarily—everyday vulgar murder, as in the case of a safe-breaker caught in the act; (4) premeditated homicide, planned deliberately in advance, in cold blood—like that of Macbeth.

The second part of the treatise is devoted to a most interesting discussion of criminals in literature and of certain recent notorious criminals like Guiteau. The third part presents the author's own view of the nature and significance of premeditation. Drawing freely for his arguments upon modern physiological and associational psychology, Cornatiano contends that according to the stock of ideas, impulses and representations that constitute the psychic make-up of the individual, premeditation may be either beneficial or harmful, individually and socially. "The intervention of reflection may be beneficial up to a certain point and place a barrier in the way of innate or acquired evil penchants, in the way of momentary desires or impulses; but we refuse to regard prolonged reflection as a positive and affirmative intervention in behalf of crime." Premeditation is not an aggravating circumstance; nor does it reveal the baseness of the criminal's soul. It offers simply a new means of investigation in the field of abnormal criminology. To determine the causes of the criminal act, it is necessary first to study the entire psychic and organic life of the author of a premeditated crime. This, of course, enlarges the domain of medical jurisprudence, which is alone capable of adequately dealing with such problems as these: In the case of premeditated crime, when the author had the power to reject the idea of crime, why did he not do so? What forces led him to harbor an idea so contrary to normal human nature? And if, as often happens, the mind that appears essentially and basically normal has had grafted upon it a series of abnormal processes, how did this happen?

George Washington University.

C. W. A. VEDITZ.

WANDTAFELN ZUR ALKOHOLFRAGE. By *Max von Gruber* and *Kraepelin*. J. F. Lehmann, Berlin. Pp. 35 and ten charts.

In order to make propaganda, in Germany, against the abuse of alcohol, different agencies coöperate. Trade unions, the sick funds, the employers' associations for insurance against accidents and other societies conduct a campaign of education. At the last hygienic exhibition in Dresden this question, of the most vital importance to the development of the race, received special attention. The exhibit, put up by the brewing interests, was attacked on all sides on account of the insincerity of its figures. When I go back to Germany, I am astonished to see what has been accomplished by the agitation against the abuse of liquor.

Kraepelin and Gruber are among the strongest enemies of the German habit of consuming liquor, and in order to show people at large the fallacies of the generally adopted ideas about the nutritious value of alcohol, and the economic and social consequences for the household of spending large sums for

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beer and brandy, they have published ten charts. Their price is so low that they will undoubtedly find a large distribution. Reproductions of the charts and explanations are contained in a small pamphlet which I have before me. It is computed that Germans spend yearly about \$750,000,000 for liquor, one-third of this sum is spent for military purposes. The first chart compares the expenses of working men in Baden and Berlin. At least 12% of the expenses of the first group go for buying liquor. The Berlin laborer spends only 6.9% of his income for it.

Here 227 family budgets have been studied; the opportunities offered to the working men in Berlin are such that they find it possible to spend their time not only in saloons but in places where they find recreation without being obliged to drink.

In chart No. II we find the well-known comparison between nutritious values contained in liquor and other food products. The mistake was not repeated here to assume that there is absolutely no nutritious value, but it is forcibly shown, for instance, how little there is in a given quantity of beer and how dearly it is paid for. It is even conceded that alcohol can be used as fuel for the human machine, but on account of the poison it contains, the nervous system is very soon affected.

It is further shown here how many calories can be bought for 25 cents, and what potatoes, macaroni, sugar and other food products contain in carbon hydrates and protein. Chart No. III shows the influence of alcohol upon eugenics. The infant mortality in families where the parents are both intemperate is shockingly high. It would not be right, however, to make alcohol alone responsible for the figures, for the surroundings, the poverty and the great number of children in these families, where under the influence of liquor the necessary restraint in sexual relations is not exercised, play an important role in increasing the infantile death rate.

Chart No. IV shows the influence of alcohol and tea upon the nervous system. The experiments were made at different times during 2 hours. It is to be regretted that the time was not extended, for, very curiously, we find that the different curves at the end of the second hour converge toward one point. The consumption of alcohol handicaps the work for an hour and a half, while during the last thirty minutes it is above the average. Tea increases the output for the first hour considerably. I do not think this chart shows any conclusive results.

Chart No. V shows the effects of a constant consumption of alcohol on the mental activity of people. The experiments were continued during 4 weeks, those who did not use liquor had a decided advantage over their drinking companions.

Chart No. VI contains a highly interesting study, made in the public schools, of the number of children who in their daily life habitually take alcohol. Less than 14% of all the school children under 14 years of age never get a drop of liquor, and more than 56% drink it every day. The damage due to alcoholic poison becomes here quite evident, the power of perception and the conduct of the children are greatly influenced by its consumption.

Chart No. VII draws a comparison between the mortality of English saloon keepers and waiters on one side and the rest of the people, which is considerably higher in the first class. A very instructive chart shows the policy of the English life insurance companies to have separate departments for

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abstainers and drinking men, whose mortality is quite a good deal higher.

Chart No. VIII shows to what an astonishing degree alcoholic excesses must be blamed for the many deeds of violence committed on Sundays. The other half of the page gives a statistic of the places where these crimes were committed; the saloon can be blamed for more than three-fifths of all the cases.

Chart No. IX gives the result of a study made in 120 German prisons in 1876, of the participation moderate and immoderate drinking had on the commitment of crimes. To our surprise, we see that people who occasionally drink show a higher percentage of criminality than the habitual drinkers. While the former's percentage in the commitment of crimes against persons, crimes of passion and immoral acts, were far above the average, the latter showed a larger percentage in cases of arson and thefts. The last table shows the life of a heavy drinker from his 18th year until his final commitment to an insane asylum. Born as an illegitimate child of intemperate parents, he did not learn a trade, became a heavy drinker, and very soon came into conflict with the law. The inadequacy of the German administration of justice can be beautifully observed by studying the diagrams. Finally he is committed to the insane asylum, and society is henceforth protected against the man who, through the constant abuse of liquor, had probably for years been irresponsible for his acts. The fight against alcohol is a fight for the preservation of the race, by a constant propaganda of information, and by giving to the working people an opportunity for recreation under decent conditions, without any consumption of alcohol, much will be gained. The most hearty coöperation of the trade unions and the socialistic party, which was caused by the hostility against the landed proprietors, will result in reaching at least the industrial workers, and convince them above all of the poisonous effects of strong liquors. The most astonishing example of the fair mindedness of the employers I observed years ago in Berlin in a great brewery. The men were formerly allowed a certain amount of free beer; the consequence was that the cases of sickness and accidents were very fast increasing, the men showed less power of resistance and could not do a man's work. The company began to furnish to its employees free of cost milk and tea with very satisfactory results. In the army and navy the consumption of liquor is decreasing, and when once the students also accept the truth that it is no sign of a gentleman to be able to consume a certain quantity of alcohol without ill effects, I believe the fight against alcohol is won.

By publishing the ten charts, discussed above, the two authors will have Chicago.
VICTOR VON BOROSINI.

PLEADINGS, EVIDENCE AND PRACTICE IN CRIMINAL CASES. By *J. F. Archbold*. Sweet & Maxwell, London, 24th ed. 1910. Pp. CXXVII+1587. Prices 26-4.

This is the 24th edition of what has been, for the last eighty years, a standard English book on the subject. In 1822 Lord Archbold prepared the original edition, the plan and classification of which has remained substantially unaltered to date. It became at once the standard in English. In 1831 Lord Jervis, Chief Justice of the Court of Common Pleas, prepared the 4th edition, and thereafter all to the 9th edition in 1843, thereby permanently establishing the work as the one standard in use. The substance of all of the excellent works of criminal law from Brackton, through Hale, Hawkins and Cole, was included. Lord Jervis was one of England's greatest criminal lawyers in practice and a

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most discriminating trial judge upon the bench. The aim seems to have been through the subsequent editions to maintain this high standard of excellence, and apparently with success. Mr. Craies, just recently deceased, the senior editor of this last edition, was one of the highest authorities on criminal law and was frequently consulted by the government on questions of both prosecution and legislation. He was practically the sole author of the late revision of the perjury statutes. His assistant, Mr. Roome, is a young barrister who has acquired a considerable criminal practice and is a thorough student of the English criminal law and procedure.

As is well known, the term "criminal lawyer" in England does not carry the opprobrium which in some minds is attached to that title in this country. The reason no doubt is that a criminal lawyer there does not become noted because of success in accomplishing miscarriages of justice or ability to persuade jurors to self-stultification. The scope of his labor within which he establishes his reputation is that boundary beyond which no lawyer may justifiably go, to-wit: the endeavor to ascertain the real truth and apply the proper rule of law thereto, to the end that the government shall never invade the rights of any man, either innocent or guilty, protecting the innocent by securing a complete vindication, and securing to the guilty immunity from punishment beyond the measure authorized by law.

The work is in one single volume of fifteen hundred and eighty-seven pages, the contents divided into two books.

Book I, treating of pleadings, practice and evidence generally, first deals with the indictment, information (used in certain limited cases in England), coroner's inquest, pleas, replications, etc. It gives a complete and succinct statement of the form and necessary contents of each, passes thence to the several proceedings in the stage of a case, including appeals, restitution of property, compensation and appeal. Then follows a discussion of evidence generally, what must be proved, manner of proving, competency, privileges, credibility, number of witnesses, method of examination, procuring attendance and payment.

Book II, comprising two-thirds of the book, deals in the same manner with specific offenses. It gives the statutes creating them, indictment, pleas, evidence and other procedure peculiar to each, and the substantive law defining each offense. The offenses are classified: first, those against individuals, which are further classified into wrongs against property and wrongs against the person (I search in vain to find included under this head wrongs to reputation), and, second, wrongs against the public, further classified into treason, sedition, coinage offenses, perjury and other offenses against public justice, blasphemy and crimes against public worship, offenses against the peace, against public trade (which includes offenses by employers and workmen, the Pure Food Act and bankruptcy frauds), offenses against public morals, including public nuisances and the like, and libel (classified as a public wrong).

The next parts relate to substantive law and procedure in conspiracy, incitement and attempt, principal and accessory, abettors, etc.

The last part of the book covers second offenders and habitual drunkards, the authors quite sanely having included these together.

While the book is confined to English law, yet it is of practical value to an American practitioner. Works of this kind, pre-eminent in their field, tend to simplify the law, prevent confusion, and avoid reversible error in trial, in

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short help to accomplish certainty. The making of a similar book as to American criminal law, by one capable and willing, would be a distinct contribution to the cause of securing efficient criminal practice. While the statutes of the several states vary in detail, the substance is not so variant as to make such an attempt hopeless. In the meantime the use by our practitioners of this *vade mecum* of the English practitioner would work toward uniformity.

Wausau, Wisconsin.

C. B. BIRD.

CODE PENAL annoté par E. Garçon. Tome Premier (Art. I a 405), Paris, 1901-06; and Premier Fascicule du Tome II. (Art. 406-463), Larose et Tenin, Paris, 1911, Pp. 376.

The review of an annotated Code must be directed rather to the annotations, as a mechanism or apparatus, than to the Code which in the present instance was promulgated over a century ago. Of two annotated works that of more recent date should have the advantage. This is not necessarily true in France where annotations frequently have the double purpose of citing the cases and of exposing the *doctrine*. The text (484 Articles) of the French Penal Code may be contained in a small volume. As annotated by Dalloz, the Penal Code is an immense tome. With the present annotator two tomes are necessary, of which the first and part of the second have appeared. The first 405 Articles required five years of preparation (1901-1906). After an interval of five years (1911) appears a further installment of 58 Articles. Certainly the end of the work is not yet in sight, with twenty-one articles yet remaining besides the additional penal legislation, codified and uncoded, which it was thought necessary to include in the Dalloz annotated code.

According to Dalloz, the *ensemble* of French penal legislation to be annotated is composed: first, of the laws brought together by codification into a single body in the Penal Code; second, of special laws which are not part of the Penal Code but complement its provisions; third, of special laws unrelated to the Penal Code but which contain repressive dispositions.

M. Garçon is professor of Criminal Law and Comparative Penal Legislation in the Faculty of Law of the University of Paris. He has set about his task rather as commentator than as digest maker. He claims sole responsibility for the merits and demerits, if any. As digest maker he has had the collaboration of the editors of the *Recueil Général des Lois et des Arrêts* and of the *Journal du Palais*. In his preface he says: "In the measure possible, I have sought to maintain the criminal law in its liberal traditions—to speed new ideas to the extent that they seem just." He admits that where the jurisprudence or case law has declared itself it should override *doctrine*, in the sense of independent arbitrary interpretation. He devotes much of his annotation to doctrine and he recognizes no slavish subjection to *stare decisis* either for himself or the courts. He says: "The jurist who applies himself to seek out and expose the doctrine which results from judicial decision does not abdicate his reason: he reserves the right to approve and to censure freely." On the continent they stand by the decisions only as long as reason commands it. With us we stand in the decisions long after reason has departed from them. Abroad, prior decisions are ignored without formally overruling them. Foreign courts are not prevented from exercising the sociological function contended for by many in this country. In continental countries there is no clamor for the recall either

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of judges or of decisions. Happy, indeed, is the continental judge with his larger sociological field and his immunity from the *hook* which threatens the American judge whether he takes judicial notice of social needs, or whether he stands rooted in the decisions. *Stare decisis* created the common law out of the shadowy nothingness of custom. Without it the paradoxically *unwritten* part of our law contained in thousands of *printed* reports would never have come into being. This immense code, for it is a code, has only one rule of interpretation—*stare decisis*. Possibly we should codify what we have acquired and dismiss that now unruly servant, finding a more flexible substitute. With us the worship of *stare decisis* may even crowd reason out of the field of persuasive authority if there is any truth in the muckraker's charge that decisions have been *planted* in corrupt jurisdictions and thence innocently carried from state to state as honest adjudications.

M. Garcon says that he has used the materials of his predecessors and has attempted "merely to bring my contribution to a work which must always be done over, since the material is ever undergoing modification. The Selections of Decisions (*recueils*) have in general furnished little in the way of criminal decisions. The source from which I have principally drawn is the rich collection of the Bulletin of the Court of Cassation. I have always consulted the text itself of the decision."

In addition to the Bulletin, the annotator seems to have consulted some ten *Recueils de Jurisprudence* and *Repertoires*, and some twenty-five treatises.

The execution of the work may best be judged by comparison with the Dalloz annotated code. Dalloz has many advantages in typographical make-up. He has a notably better page heading with the Article, Book and Title numbers and the Section rubric. Garcon has simply the Book and Article numbers at the head of the page. In Dalloz there is better use of type throughout. The text of the Article in Garcon, although set up clear across the page, is not sufficiently detached from the double column annotations. The Dalloz page is larger, and he does not break his three columns for the text, but uses bold-face type for the Article and for the numbers of his paragraphed notes.

On the exceptional case provided for in Article 27, namely the delay of execution of a pregnant woman until after her confinement, both annotators give three notes. Dalloz cites one case, decided in 1811; his other references are to the Article Punishment (*Peine*) in the Dalloz Repertoire. Garcon gives the Roman Law origin, with citation, the recurrence of the principle in the Ordonnance of 1670 with citation, and the more liberal provision in the law of 13 *germ. an. III.* together with four decisions from 1805 to 1807. He also gives the decision of 1811 cited by Dalloz and the Article in the Repertoire. This article is therefore better annotated in Garcon than in Dalloz. To give the origin of a principle, without too much unsupported doctrine, is commendable in the annotator. There is public policy in many of the principles derived from antiquity. Public policy is not always evident to a *nisi prius* judge. Not long ago it was held that there is no public policy in a provision against the remarriage of a divorced woman within ten months following the dissolution of her marriage.

Article 28 reads: "Sentence to the punishment of forced labor for a term, of detention, of imprisonment (*reclusion*), or of banishment imports civic de-

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gradation. Civic degradation is incurred from the day that the sentence becomes irrevocable and, in case of contumacious sentence (*par contumace*) from the day of the execution in effigy." Here is an article treating primarily of the relatively unimportant matter of civic degradation yet it mentions sentence *par contumace* and the execution of that sentence in effigy—presumably where the accused fails to appear for his trial. M. Garcon takes it for granted that his readers know all about contumacious sentence. Surely it is the annotators duty, by notes or cross references, to indicate where the details of this unusual proceeding may be found. Dalloz gives the cross references in bold face type right after the body of the article and guides us at once to the Code of Criminal Instruction. Garcon annotates the enumerated punishments, etc., and the citations for the formalities for the execution of the sentence in effigy which one would naturally not expect to be executed on a straw man. Both annotators indicate the trail to the principal institution which is in the Code of Criminal Instruction and in the Dalloz *Repertoire*, Article, *Contumace*. In the Dalloz Annotated Penal Code the result is more quickly attained.

Articles 341-344, treating of kidnapping, etc., are annotated as a group by Garcon and separately by Dalloz, who has the greater number of notes. Garcon has 89 numbered notes as against 148 by Dalloz. The 89 are much fuller and at their head is an alphabetical index which may have been suggested by the similar feature made use of by Dalloz at the end of his longer annotations. Despite the numerical difference in the notes to the four articles there is practically the same quantity of annotation in the two codes.

Article 373 provides: "Whosoever shall make by writing a calumnious denunciation against one or more individuals, to the officers of justice or of administrative or judiciary police shall be punished by imprisonment from one month to one year and by a fine of from one hundred to three thousand francs."

This article seems better calculated to excite the French love of litigiousness than to suppress it. On this article, Dalloz has 540 short notes; Garcon has 414 longer ones. It is, of course, possible that the quantitative value of this article may arise from the jurisprudence itself. There is not a quantitative correspondence between the two codes throughout yet the Dalloz idea of the relative value of Articles for annotation seems to have been, in some degree at least, a quantitative guide.

Article 434 treats of incendiarism: it would be inaccurate to designate the crimes here grouped by the general term arson. To this Article Garcon devotes 197 very full notes in 30 pages; Dalloz has 392 short notes in eleven pages equivalent to about 15 pages of Garcon. All of Dalloz notes have citations or cross references. Doctrine is practically absent from Dalloz and abundantly present in Garcon. The writer on jurisprudence would get more theory from Garcon; the lawyer in search of French decisions would get better results from Dalloz; and this remark is not restricted to the particular article under discussion. In its last paragraph, Article 434 fixes capital punishment "if the fire causes the death of one or more persons who are in the places burned at the time the fire breaks out." Garcon's note 12 explains the doctrine and in part is to the effect that the text applies the theory of eventual wrong (*dol eventuel*) and "makes the voluntary incendiary responsible for all the consequences of the fire, consequences which he could and should have foreseen." The text of the article is not as broad as the principle of natural and probable consequence

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applied by the commentator. If the text does not include responsibility for the death of firemen engaged in extinguishing the fire it does not rest unrestrictedly upon the theoretical principle cited. Note 13, is again largely doctrinal and has to do with the limitations in the Article on the right to burn one's own property. The commentator says that one has the right to destroy old furniture to get it out of the way or to destroy an infected house. The owner may destroy his property through emotional caprice. The mode of destruction is indifferent. It may be destroyed by fire if the fire be not communicated to another's property and if no prejudice be caused to insurers, mortgagees and pledge creditors. The doctrine developed stresses inaccurately the *jus abutendi*. In the original and most perfect definition of ownership "*jus utendi, fruendi, abutendi*," the last word is used in the sense of exhausting the utilities of the objects of ownership, not of *abusing* them. Jurisprudence denies the abuse of every right. There are abuses of the right of private property and there is no socialism in taking the true measure of that right.

In Garcon's Annotated Code there is more of legal history and of the philosophy of law than in Dalloz. For practical purposes and as a search book Dalloz remains the more convenient work.

Chicago.

JOSEPH I. KELLY.

LES TRIBUNAUX D'ENFANTS EN HONGRIE RAPPORT, Présenté par le Dr. Roustem Vambery, Procureur du Rei. Professor Agrégé à l'Université de Budapest Délégué par le Ministère Royal Hongrois de la Justice, Au 1. Congrès des Tribunaux pour Enfants. Pp. 34.

The physical and moral well-being of the youth is the best guarantee of the nation's development. Yet the increase in juvenile crime in the last half century has been proportionately greater than the augmentation of crime in general. This situation is traced to industrial and hygienic causes and to the faults of the penal code which punished rather than corrected the adolescent delinquent. The change in the law's attitude toward the young offender is due not only to our having discarded the idea of vengeance but also to the development of a positive public sentiment toward this class of law breakers. It is the century of the child.

The Hungarian law concerning delinquent minors adopts the corrective measure—reprimand, probation, education, or detention—to the needs of the individual. No sharp distinction is drawn between educative and punitive methods. The provisional law of 1908 and the further law of 1910 provided for the selection of judges for the juvenile courts, the use of hours separate from those when adult cases are heard, and a committee to defend the child at his hearing and to care for him during the period of his arrest. The work of the probation officer is recognized as the most important part of the system.

Recently the most noteworthy innovation is the study of the social conditions which have led to the child's delinquency. The age of the child should not be the measure of his responsibility, which is the product of age, environment and ancestry.

In considering the future work of the Juvenile Court the author points out that the jurisdiction of the various criminal courts must be strictly defined. Eventually all matters concerning accused minors may probably be considered by a single tribunal. In accordance with this there should be appointed a judge

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for such a court whose sole work would be its administration. His legal erudition would be of less importance than his knowledge of criminal psychology and of pedagogy, and his interest in the work would be a necessary qualification.

Detention, as a form of disposition of the delinquent, must be accompanied by some corrective education; detention is justified as an alternative for probation only when the morals of the individual are endangered by his liberty or when the morals of society are so endangered.

This little pamphlet is a brief survey of the status and needs of the Juvenile Court in Hungary. To those who know the Juvenile Courts of America, the similarity of opportunity and limitation is striking.

University of Washington.

STEVENSON SMITH.

Die Psychologie des Verbrechers, and Strafe und Verbrechen. By *P. Pollitz*. B. G. Teubner, Leipzig, 1911. Two volumes. Pp. 280.

This brief notice is a souvenir of a most instructive day spent with the author in visiting a reform school and a prison in Germany in 1911. Dr. Pollitz is a specialist in nervous diseases and the successful director of a prison. His two books cover in small compass the most vital subjects of criminal psychology and of prison science, and it is remarkable how much solid information he has condensed in the 280 pages of printed matter in the two volumes.

Perhaps the discussion of the characteristics and best modes of dealing with "defective delinquents" is one of the most illuminating and suggestive parts of the work. The Massachusetts law of 1911 on the separation of this group from normal convicts for particular treatment, and similar advance in the State of New York, show what other commonwealths are sure to take up before long. The spirit of recent German theory and practice is admirably interpreted, while a very good understanding of American experiments and tendencies shows his breadth of view.

C. R. HENDERSON.

University of Chicago.

TYPEWRITING IDENTIFICATION. By *William J. Kinsley*, New York. Pp. 20.

This pamphlet is an interesting and important report of a comparatively new kind of legal investigation, that is, the proof or disproof of typewriting.

There are many jurisdictions in the United States where cases of this kind have never been heard and there are many lawyers who are so incredulous because uninformed on the subject, that they will hardly give such a question serious consideration.

The most forcible answer to such incredulity is the report of the case of *People v. Risley*, printed in this publication, in which a distinguished lawyer was accused of fraudulently writing or procuring to be written two words in typewriting in a court paper. The case did not turn on the question whether there was a fraudulent alteration, but whether the fraudulent alteration was made on a particular typewriting machine owned by the defendant.

After a fiercely contested trial, the jury decided that the seven letters were written on the particular machine belonging to the defendant and returned a verdict of guilty. Mr. William J. Kinsley, of New York, photographed the documents and testified as an expert witness regarding the typewriting as also did representatives of the Remington Typewriter Company of Ilion, N. Y. The nature of the inquiry in this case and its result goes far to show the possibilities of proving a typewriting in a court of law.

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The question is, in fact, simply a question of scientific comparison. For this purpose enlarged photographs are absolutely essential if the facts are to be clearly shown as they were at this trial. It is fortunate indeed that typewriting can be identified in view of the present extended use of machine writing, and it is sincerely to be hoped that typewriting manufacturers will assist in promoting the ends of justice by continuing to individualize their own machines as manufactured, as they have done in the past. As is well known, a machine inevitably begins to individualize itself as soon as it begins to be used until it is as full of characteristics as a battle-scarred veteran who also may have begun his career with numerous birthmarks and individual characteristics.

It is a hopeful sign that courts are now almost universally permitting full and free illustration of cases of this class and hearing detailed testimony with reasons so that it is possible to instruct even an untrained jury so that they may themselves reach a correct conclusion. This relieves at least this branch of expert testimony from the common criticism that it is a "mere opinion."

This pamphlet also refers to other typewriting cases of interest in which it has been possible to discover and prove the facts in what at first sight in numerous instances appeared to be abstruse, difficult and hidden problems.

New York.

ALBERT S. OSBORN.

ONE THOUSAND HOMELESS MEN. By *Alice Willard Solenberger*. A study of Original Records. Charities Publication Committee, Publishers for the Russell Sage Foundation, New York, 1911. Pp. XXIV—374.

Mrs. Solenberger's study of "One Thousand Homeless Men" is based on the case histories made in the central district of the Chicago Bureau of Charities between the years 1900 and 1903. Not long after beginning her work, Mrs. Solenberger realized the value of the accumulating histories and took steps to secure data not only for purposes of investigation by the Bureau but as a basis for constructive work with men of this class. She recognized the fundamental importance of the attitude of the investigator in obtaining reliable data and trained her workers with a view to the greatest possible accuracy. Judging from results, these workers must have possessed unusual sympathy, tact and judgment. Realizing the value of independent confirmation of the tales presented by these men, Mrs. Solenberger caused inquiries to be sent by hundreds to their home towns, to the municipal and charitable agencies at these places and to the families of their friends. Moreover, leaving the Bureau in 1903, Mrs. Solenberger by no means lost her interest in the cases but through correspondence followed up as many as possible, to learn the results of the treatment applied. These thorough methods give unusual value to the statistical tables presented in the book.

In analyzing the data at her command, Mrs. Solenberger divides the one thousand cases into seven groups. These are men crippled by disease; men claiming industrial accidents; insane, feeble-minded and epileptic men; homeless old men; chronic beggars; tramps and homeless vagrants; and runaway boys. There are also tables concerning one thousand homeless men showing their ages, nativity, education and conjugal condition. There is one table giving the defects and disease of six hundred and twenty-seven men and one table showing the causes of crippling, excluding the cases where it was caused by illness or where a man claimed industrial accidents.

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In the body of the book, Mrs. Solenberger gives a discussion of these various classes adding chapters on seasonal and casual labor and the interstate migration of paupers and dependents. Mrs. Solenberger recognized that among all these classes, the men may be divided, first, into those who are self-supporting but who through accident are obliged to ask for some temporary assistance; second, those who are temporarily dependent and become self-supporting, having been tided over temporary difficulties; third, chronic dependants which group contains the crippled, deformed, feeble-minded, etc.; fourth, a parasitic class which contains the impostors, beggars, confidence men, etc. These classes merge into each other and the three first groups constantly contribute to the fourth.

In five appendices, supplemental tables are given. The cheap lodging houses are discussed and a separate consideration is given to the homeless man in Minneapolis. The figures for Minneapolis were obtained through the Minneapolis Association of Charities in 1910.

Mrs. Solenberger has no special thesis to prove by her statistics and it is this which gives the peculiar value to the book. It is a fair-minded study of facts obtained through careful collection of data confirmed by independent investigation wherever possible. The individual stories given, show the sympathy and insight which guided Mrs. Solenberger in her work. The book points to many of the causes of homelessness. It makes no attempt to show remedies but points out various avenues along which solutions of the problems probably lie, for the one thousand homeless men include classes who offer not one, but many problems to the social worker.

In the light of the emphasis laid in recent years on mental defectiveness, we cannot but wonder when looking through the book, whether the eighty-nine insane, feeble-minded and epileptic men really include all of those who belong particularly to the feeble-minded class. The impression gained by reading the chapters on chronic beggars, wanderers, tramps and runaway boys, leads one to feel that among them are many who have abnormal mentalities which have predisposed them to this kind of life and we wonder whether the enlightened custodial care of this most difficult class in the community is not going to solve some of the problems raised.

Mrs. Solenberger's book should be read with care not only by workers in Bureaus of Organized Charities but by the social workers whose interests lie in any of these classes. It affords much that is illuminating and much that is suggestive.

KATHERINE BEMENT DAVIS.

Bedford Hills, N. Y.

THE PRESENT DAY PROBLEM OF CRIME. By *Dr. Albert G. Currier*. Published by The Gorham Press, Boston. Pp. 179; price \$1.10.

Because the problem of crime is a complicated one, and must be discussed from many angles, Dr Currier's book will serve a useful purpose. The author disclaims a scientific treatise, and his work can hardly be called a literary production. Neither is there evidence of any practical contact with the genus criminal of which he writes. The style and method of the writer are purely didactic. It is, nevertheless, an important contribution to the increasingly large output upon this important theme.

The general reader, particularly, will find in the volume, a fund of information as to the history of the movement for improved prison conditions; the

REVIEWS AND CRITICISMS

increase of social legislation for the treatment of delinquents, and the adoption of measures for the prevention of crime. The practical movements cited are those which have impressed the author, rather than those which one of wider knowledge and experience would suggest as of greatest significance. The somewhat common error is found, in speaking of Judge Lindsey as the "Father of the Juvenile Court," regardless of the fact of Chicago's prior claim, and Judge R. S. Tuthill's pioneer work in this field. Considerable pains is taken to give a comprehensive classification of the well-known causes of crime, and generally accepted means of prevention.

The author declares his optimism as to the forces of society now marshalled to solve the problem of crime, though the references he makes to the "wicked, desperate criminal," if one believed it to be a reality, would be somewhat depressing.

The introduction of an extended chapter at the close of the volume concerning the life and work of Lord Shaftsbury gives a first impression of extraneousness. The reader soon feels, however, that many of the industrial and social causes of crime that were forced upon the attention of the English Parliament, still continue in every country. The powerful personality and the persistent faith and tact of a Lord Shaftsbury, is needed in every commonwealth to awaken its legislators and citizens to cope with complicated questions of crime, prevention and cure.

Dr. Currier's book will furnish renewed inspiration for this fight and should be read by every thoughtful citizen.

Chicago.

F. EMORY LYON.

POLICE SCIENTIFIQUE ET ANTHROPOLOGIE CRIMINELLE. By *S. Ottolenghi*. *Revue de Droit Pénal et de Criminologie*, VI, 2. Pp. 89-94.

In this article Professor Ottolenghi of the University of Rome criticizes the opinion expressed by Professor Reiss of the University of Lausanne that criminal anthropology has nothing to do with scientific police methods. Reiss thinks that the science of police methods should include only such things as the methods of identification, the gathering of the traces of crime, etc. In other words it should be a study of the criminal in action. Ottolenghi also emphasizes the importance of the study of these things but insists that the science of police methods should include also the study of criminal anthropology and psychology. He believes that the knowledge so gained is sometimes useful in identifying criminals and is at all times useful for understanding the nature of the criminal in a way which the study of his actions alone can never reveal.

University of Missouri.

MAURICE PARMELEE.

Journal of the American Institute of Criminal Law and Criminology

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Communications relating to contributions and books for review should be addressed to the Managing Editor, Evanston, Ill.

Subscriptions and business correspondence should be addressed to the Managing Director, Northwestern University Building, 31 W. Lake Street, Chicago, Ill.

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CONTRIBUTORS TO THIS NUMBER

John Bradley Winslow, Chief Justice of the Supreme Court of Wisconsin. A. B. Racine (Wisconsin) College, 1871; A. M. 1874; LL. B. University of Wisconsin, 1875, LL. D. 1904. City Attorney, Racine, 1880-3; Judge First Judicial Circuit, Wisconsin, 1884-91; Justice of Supreme Court of Wisconsin since May 4, 1891; Chief Justice since Dec. 30, 1907.

Frank L. Randall was born at Fort Ridgley, Minnesota Territory. At the age of seventeen he became a rural school teacher, and at twenty he was County Superintendent of Schools of Nicollet County, Minnesota. In 1890 he was admitted to the bar, and practiced law at New Ulm and Winona, Minnesota, for twenty years, and held various public positions. On April 1, 1900, he became General Superintendent of the Minnesota State Reformatory at St. Cloud, which position he still holds.

Nathan William MacCheesney, member of the Chicago Bar; Commissioner on Uniform State Laws, President of Northwestern University Law Publication Association; Colonel and Judge Advocate, Illinois National Guard and A. D. C. on staff of Governor Deneen; member of Executive Board of American Institute of Criminal Law and Criminology; President of the Institute, 1910-11; author of numerous articles on labor, property, corporation, and legal matters.

Edwin M. Abbott, Philadelphia, was graduated from the Law Department of the University of Pennsylvania, class of 1896, and was admitted to the bar June 6, 1896. Since that time he has been actively engaged in the practice of law, particularly in the criminal courts, where he has tried forty murder cases. He was the nominee of the City Party for clerk of the Court of Quarter Sessions in 1907; elected to the House of Representatives in November, 1910, on the independent ticket. He is a member of the American Bar Association, Pennsylvania State Bar Association, Law Association of Philadelphia, American Institute of Criminal Law and Criminology, Law Academy, Geographical Society, Academy of Political Science, et al.

William N. Gemmill, Judge of Chicago Municipal Court. Graduated from Cornell College, Iowa, in 1886. During the four years following he was superintendent of schools in Rockford, Iowa. In 1892 he entered the Northwestern University Law School, graduated and was admitted to the bar. He continued the practice of law in Chicago. At present his assignment is in the Court of Domestic Relations. A member of the Hamilton Club, the Press Club, and various other civic organizations in Chicago. Author of reports of Committee G on court proceedings in the Institute.

tice of his profession in Chicago for six years, and in 1898 he became one of

EDITORIALS.

IN CASE OF FAMILY DESERTION OR NON-SUPPORT.

The article on the Court of Domestic Relations of Chicago, by Mr. William H. Baldwin, which appears at page 400 ff. in the last issue of this Journal, calls attention to a department of penology that has a character largely its own. Ordinarily the offender and the individual or the individuals who are injured have diverse interests. The punishment of the former, therefore, does not interfere with the welfare of the latter. Indeed, the injured may experience a considerable degree of satisfaction because of the legally inflicted discomfiture of the offender. In those cases, however, that come before the Court of Domestic Relations the offender and the injured, if husband and wife, have legally assumed common interests. If parent and child, once more, their life is common, and the restriction of one is the restriction of the other. The plaintiff and the defendant are representatives of a particular family—a particular unit in our social organization. This being the case, therefore, however carefully we may guard the dependents of convicted murderers, etc., from misfortune, we ought here to be particularly zealous lest in applying correctives we enhance that suffering of wife or children or both, on account of which the action was brought. This should be especially upon our conscience. To meet the situation we must provide for dealing sharply and quickly with the deserter or non-supporter. He must know exactly what to expect—and so must his family. To prevent pauperization, and in consequence, probably, forcing the unprotected into crime, these dependents must be supplied by their natural guardian, and with the least possible interruption or disturbance of normal domestic relations.

This suggests the query whether the deserter or non-supporter, or both, as the case may be, should be dealt with as a felon under the law or merely as a misdemeanor. One of the considerations that has arisen in this connection is the need of providing for occasional extradition of a deserter who has fled the state. There is an impression that extradition can not be secured in the case of an offense less serious than felony. As Mr. Baldwin, in his address before the National Conference of Charities and Corrections at Boston, June 10, 1911, proves, it is a mistaken impression. The constitution of the United States in defining the extraditable person (*Art. 4, Sec. 2*) says: "A person charged in any state with treason, felony, or other crime," etc. And this, as Mr. Bald-

FAMILY DESERTION OR NON-SUPPORT

win points out, was confirmed fifty years ago by a decision of the Supreme court of the United States (*24 Howard, U. S. 66*) with reference to "treason, felony, or other crime," in the following language: "The word crime of itself includes every offense, from the highest to the lowest in the grade of offenses, and includes what are called 'misdemeanors' as well as treason and felony."

Nothing more is needed to prove the extraditable character of misdemeanor but there is further proof of the most cogent kind: the fact that misdemeanants actually are, in many cases, extradited—moved from one state to another with facility and despatch. Here one should notice Mr. Baldwin's statistics, in the address referred to, which show that in New Jersey, where desertion is misdemeanor, there is a higher proportion of extraditions compared to the population than in any jurisdiction in which the offense is a felony. In Colorado, Illinois, Delaware, Georgia, Kansas, Kentucky, Massachusetts, Maryland, Mississippi, Montana, New Mexico, New Hampshire, North Carolina, Pennsylvania, Vermont, and Wyoming the offense is misdemeanor also, and in all but Mississippi, New Mexico, New Hampshire, Vermont and Wyoming extraditions in greater or smaller number have occurred.

But the strongest reasons against making the offense a felony are in the first place, that the family has already been hard pushed by necessity occasioned by an indolent or reckless head, and to place him in prison is simply to aggravate the condition that led to the complaint against him. It is like fining the drunkard who has deprived his family of bread to supply himself with liquor; secondly, the case is usually begun in a lower court which has no power, and which often releases the defendant on the mere promise of support, when there is no machinery to secure it; it is much more difficult to get a conviction in a felony case, and the result is that many who should fare otherwise go scot free of all responsibility. As the secretary of the Humane Society of San Francisco, quoted in Mr. Baldwin's address, said, "The machinery is too big for the material handled."

The court that handles these cases should be a great probation institution with a group of trained probation officials at its disposal, with power to imprison at hard labor, the compensation for which should go to the family; with power also to forego commitment on condition that at stated intervals a specified sum be paid to a representative of the court for the support of the family concerned—a noteworthy feature of Judge Goodnow's court in Chicago.

Certainly, here as elsewhere, in penology and in education at large,

EXAMINATION BY TRIAL JUDGE

it is of the utmost importance that failure to perform a social obligation should be followed by instantaneous correction. Whatever delays or makes it uncertain is mischievous.

The uniform law, proposed by Mr. Baldwin, and published in this issue at page 618 ff. is, with a few modifications as indicated in the note appended to the law, practically what the Commission on Uniform State Laws had already proposed. It provides that desertion or non-support be treated promptly and effectively as misdemeanor. It covers all the points that arise, and if generally enacted, it should do much to solve a perplexing social problem.

ROBERT H. GAULT.

EXAMINATION BY TRIAL JUDGE.

The Supreme Court of Kansas states (*State v. Keehn*, 85 Kan. 765) that it would appear from an Illinois opinion quoted that, while the trial judge has ample authority to conduct an extended examination of a witness, it is seldom safe for him to undertake to exercise it. The Kansas court takes a different view, stating that the purpose of a criminal trial is to ascertain the truth about the matters charged in the information, and that it is a part of the business of the judge to see that this end is attained. The trial judge says the Kansas court is not a dumb moderator over a contest, but an integral factor in the discovery and elucidation of the facts. He is not bound to rest content with the modicum of evidence doled out by counsel, but he may aid the jury in obtaining a comprehension of the facts. "Therefore, whenever in his judgment the proceeding is not being conducted in a way to accomplish the purpose for which alone it is instituted—the full development of the truth—or whenever he can effect a better accomplishment of the purpose, he not only has the right but it is his duty to take part." The court adds that there are limitations upon this power but that they are merely those which good sense and propriety suggest.

It would appear from the above case that a trial judge has not been "shorn of his common law rights" as has been expressed by some well known men, and that in some jurisdictions, notably Kansas and Georgia, he has exercised the particular right to examine witnesses in order to get at the merits of the case. The writer does not attempt to assert that a judge has this right in all jurisdictions, as he has attempted no exhaustive examination of the statutes of all the states, but it is apparent that the restoration of the judge to his commanding position occupied at common law is not, in some jurisdictions, a question of law but of ex-

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pediency. In the jurisdictions referred to, the matter may be stated thus:

1. That the trial judge has the legal right to examine witnesses;
2. That the exercise of that right may be reviewed in the appellate court on the ground of abuse;
3. That some trial judges, at least, have exercised the right;
4. That the office of judge may be restored, if ever lost, "to the commanding position occupied at common law" by the mere exercise of the right.

In the opinion of the writer, the matter is reducible to these questions:

1. Shall the trial judge exercise the right at all?
2. If so, how far shall he go in individual cases?
3. Granting the right and its attempted exercise, is it not apparent that greater care should be taken by the public to choose and retain persons of experience, ability, and fairness, as trial judges?

In these days of complaint, will the public pay the salaries, guarantee the tenure of office and exercise discriminating care sufficient to attract and select proper persons to exercise the above power?

W. E. HIGGINS.

CITY CHILDREN AND CRIME.

The report of a subcommittee of the committee on education of the City Club of Chicago, recently issued, contains material which should receive the serious attention and consideration of criminologists.

All social improvement must wait for education. But education must involve the development of habits of industry; of devoted application to a series of activities all of which, taken together, complete an adjustment of the worker to an aspect of his environment. Unfortunately there are thousands of young men and women in our cities who could do better but who, in the circumstances in which they are placed, are getting away from rather than moving toward those habits that make for social adjustment.

The report referred to indicates that in the city of Chicago there are 23,415 children at the crucial period of development—between fourteen and sixteen years of age—who are not in school. This is one and one-tenth per cent of the total population of the city. Over half of this number—11,750 to be explicit—are idle according to the census enumerators. The remainder, it is estimated, drifting as they do from one occupation to another, are actually employed only one-half of their time.

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Intermittent periods of idleness alternate with a few weeks of work. All this serves to develop that unsteadiness of purpose, irresponsibility of character, and irregularity of habit, which is the undoing of manhood and womanhood. It is not the least unfortunate aspect of this whole situation that fully one-third of the number quoted had not advanced beyond the fifth grade in the public schools before they went into the streets.

But what is all of this to the criminologist? Col. Adams, superintendent of the St. Charles School for Boys in this state, spoke at the Fifteenth Annual Conference of Charities and Correction in part, as follows: "Into the St. Charles School for Boys and all other similar schools throughout the country, boarding schools for delinquent boys, if you please, come the lads whom the courts have declared to be delinquent. *They are mostly from the large towns and great cities; occasionally there is one from the country and from the average and the smaller towns. The environment of the large percentage of the lads has been that of the slums, tenements and streets.* When we recall that the largest percentage of truancy and idleness is found among the denizens of such districts it is not a far cry to the conviction that if we could do no more than keep these young people away from the streets; if we could but get them into schools in which their interest may be directed forcibly to something else than to that antisocial behavior toward which so many in their ignorance are drifting; if we could do this we could accomplish much toward diminishing the train of juvenile offenders who are continually on their way to St. Charles and other similar institutions.

Furthermore, from a slightly different angle, the criminologist is properly interested in those who are employed during their whole time. They are at the lowest round of the ladder. What appears to many of them to be a vast confusion of means and ends is an impossible barrier to their imaginations. They do not see, neither can they see the possibilities that lie in the future for one who is industrious and painstaking. The tempters in the street find such youths an easy prey. This should suggest to the criminologist as it has already done to an army of workers in our public educational system that continuation day or evening classes, open for a few hours each week to employed children, may be of great moral value. They should open up the view of an honorable occupation to hundreds of boys and girls, and incite them to make their way upward. If so it is reasonable to assume that in such institutions we should have a check upon the development of juvenile offenders.

The Illinois branch of the Institute of Criminal Law and Criminology has appointed a committee to take up the problem of education as

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a preventive of crime and, through its legislative committee, to recommend progressive legislation. Other organizations are at work. They are approaching the problem from the pedagogic or from the economic angle. Some of them have drafted bills but differences of opinion prevail with respect to the means that should be applied. The supremely important thing now is that these organizations or their representatives get together in conference so that all may reach the same platform and array themselves behind one legislative proposal, to the end that without division of opinion, we may unitedly ask for whatever legislation may be most effective in supplying the need of all.

Assuming that we have found, in the class of young people of whom we have been thinking, a source of danger to our institutions, and that education—vocational or otherwise—is an effective preventive, then it seems to me that the proper course is clear. Make attendance at educational institutions compulsory up to or beyond the sixteenth year of age as far as practicable for all youths, whether they are employed or not. If this could be made to apply to the whole state, well and good. If differentiation is necessary, then at least extend the legal school age in cities of a certain class in which there is inevitably a considerable body of idle youth. It must then be compulsory upon these cities to provide, no doubt with the assistance of the state at large, such educational facilities in the way of regular and vocational schools, etc., as will best meet the requirements of the situation. This will, of course, include the provision of part-time continuation classes for those of legal age who are in employment. In order that the special ends of the criminologist may be reached it is absolutely essential that legislation on the subject should be not only permissive but compulsory.

The plan is not revolutionary. The city of Cincinnati, acting under the laws of the state of Ohio, is now compelling working children of school age up to sixteen years who have not completed the eighth grade to attend continuation schools for four hours a week. With rare exceptions the authorities have the hearty co-operation of employers, and the result is highly satisfactory. This is distinctly in the direction of child welfare. With any movement whatever of which this can properly be said the Institute of Criminal Law and Criminology can and will unhesitatingly identify itself. No organization can in common sense or in sound logic refrain from joining hands with others on that basis. Under that sign every society can ultimately attain its benevolent purposes.

ROBERT H. GAULT.

THE "THIRD DEGREE" AND TRIAL BY NEWSPAPERS.

In theory torture as a method of investigation has no place in our administration of the criminal law. The principal reasons for this are, first, because the idea is repellent to our feelings of humanity and fair play; second, because the presumption of innocence until guilt is proven is a fundamental principle of our law, whereas the practice of torture is based on the presumption of guilt; and, third, because it has long been recognized that admissions or confessions secured under the pressure of torture are unreliable.

At times the charge has been made that police inflict physical or mental torture in so-called "third degree" examinations; but since the examinations of prisoners by the police are generally conducted in private, it is difficult to secure proof of improper practices. It is, therefore, of particular interest to note a case in which the police administered the "third degree" before an audience of newspaper reporters, and even permitted these to join in the examination.

On the morning of Thursday, October 31st, Charles N. Conway and his wife, Lilian Conway, were arrested in Lima, Ohio, charged with the murder of Sophia Singer in Chicago on October 28; at 2 a. m. of the following day they were taken by Chicago detectives on board a train bound for Chicago; upon their arrival in Chicago at 7:30 a. m. they were taken to a police station; and at noon the woman confessed to detectives that the murder was committed by her husband. The experiences of this couple during the period from their arrest to the woman's confession are described in the following clippings from various editions of six Chicago papers:

At Lima—

While they were in the Lima jail both the man and woman came close to the verge of nervous collapse.

Conway appeared on the verge of a nervous collapse when he entered the room where the police and the reporters were. During the questioning the sweat broke out in beads on his forehead and streamed down his face.

They were put through a grueling cross-examination by the detectives immediately before their departure and when Conway, or Kramer, as he is known in Lima, emerged from the room where he was under fire the perspiration was dripping from him and his hands shook like leaves.

On the train from Lima to Chicago—

In the other coach there was little rest for the circus clown's companion—the snake charmer. But this for another reason. Detective O'Connor was at work on a theory with which he hoped to shake the woman's steadfast refusal

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to confess to being an accomplice in the crime. The grilling that began when the Chicago officers started their examination in Lima had not ceased for her when she boarded the train. * * * The strain maddened the woman. Once she broke into sobbing.

"Please stop now for just a little while," she would gasp. "I can't stand it longer."

Late on the night of November 1, after a rigorous examination, Detective O'Connor of the Chicago police force made the following announcement:

"We expect a confession in a short time. The woman isn't going to hold out much longer."

The trip from Lima was an ordeal for the prisoners, which found a continuation in a "third degree" of interrogation in Chicago.

The plan to re-enact the tragedy without giving the pair a minute to rest on their arrival here was done in order to bring about the confession.

In the Chicago police station—

Confident that she was breaking down and that a confession would be wrung from her, they plied her with question after question, and she was allowed little time for response.

The tortured woman screamed her denial. Her voice dropped into a moan. She half rose from her seat in the hard straight-backed chair and threw herself across the police captain's desk. She shook with agony.

"Why don't you confess now?" the police asked Mrs. Conway.

"I have no friends here, nobody is for me. I am all alone," the woman sobbed.

At one point a detective came out of the room and asked for coffee and water for Mrs. Kramer.

"Has she fainted?" he was asked. "No," he replied, "but she is very weak."

At this point the police inquisitors believed they were about to get a confession. The woman fainted, but was revived and asked for some coffee. This restored her and she went on under a fire of questions without breaking down.

Mrs. Conway became hysterical. Her screams could be heard throughout the station.

She was confronted by William R. Worthen, fiance of the slain woman. This seemed to mark the beginning of her collapse. Soon thereafter she became hysterical and searching questions soon brought on the breakdown.

Mrs. Conway's confession was made in a hysterical, despairing effort to save her own life.

Downstairs in the cellroom of the station Conway paced back and forth in a cell.

He could hear the screams of his wife, the hurrying about and the commotion in general, but he was kept in ignorance of the confession that had been wrung from the woman and the dramatic scenes that had taken place.

The prisoners were, of course, admonished during the course of the examination to tell nothing but the truth, and warned that anything they might say would be used in evidence against them. The inquisitors of the Spanish inquisition used the same formula. In a book on the inquisition published in 1734 (*History of the Inquisition*, by J. Baker),

EDWIN R. KEEDY

the author says: "The criminals are with great care and diligence to be admonished by the inquisitors, and especially when they are under torture, that they shall not by any means bear false witness against themselves or others, through fear of punishments or torments, but speak the truth only."

As though fearful lest the results of their examination might not be publicly known the detectives gave interviews to the newspaper men throughout the day. Following are several of these interviews:

Captain John Halpin, chief of detectives, says—

"The Conways are guilty and will be proven so. Their own stories will convict them. In my opinion they premeditated the murder of Miss Singer."

Detective James O'Connor of the Chicago Detective Bureau, who, with Detective John Egan is in Lima to bring the prisoners to Chicago, is authority for the admission report.

"While we have as yet no absolute flat confession from 'Conway' or his companion that they are the ones who committed the murder," said the detective, "the admissions contained in the signed statements which we have obtained from the two are of such character that I am satisfied that we have sufficient evidence right now to convict."

Sergeant Whitney, who was in the lieutenant's room when the woman told her story, said:

"Mrs. Conway expressed willingness to tell all, and her story was a rambling and disconnected one. She admitted she had quarreled with Miss Singer the night the murder occurred. She said Miss Singer had asked her to go out with her and meet a friend on Monday night and that she refused. She said that this led to a quarrel and that she left the Conway room, where words had been exchanged.

"Mrs. Conway said her husband took up the quarrel with Miss Singer a short time later in the Conway room, and that during the quarrel she was in the dining-room. She said that while she was in the dining-room she heard a commotion in the Conway bedroom. The next she told of was when she and her husband ran out of the house. She said Miss Singer was on the bed tied hands and foot when they escaped.

"She was in too bad a condition to tell all the details, but made it clear in her statement that she was an unwilling witness to the killing. She said she was powerless to prevent it."

What would the situation have been if the endurance of Mrs. Conway had proved superior to the grilling of the detectives, and she had not confessed? The newspapers throughout the day had published statements of the detectives, indicating their belief in the guilt of the accused. Large headlines announced incriminating circumstances. One newspaper went so far as to tabulate, under the heading "Evidence in Singer Murder—Against Wooden-Foot Clown and Queen of Burlesque," various facts and statements tending to show the guilt of the prisoners. In short, the newspapers proclaimed abroad the guilt of the accused.

THE "THIRD DEGREE" AND TRIAL BY NEWSPAPERS

Opinions prejudiced to the accused are thus created in the minds of the readers, who thereby are unfitted for jury service, or if not are provided with an excuse for escaping such service.

The administration of the criminal law is a subject that is attracting much popular attention and engaging the serious consideration of thoughtful men. Learned societies are appointing committees to investigate the defects of our system and to determine influences which tend to prevent the proper administration of the law. The Conway case presents in open and striking manner two pernicious features of our administration—the "third degree" and trial by newspaper. In fairness to the police their point of view should be considered. In so far as this can be determined it is that, since there are so many loopholes for escape in the trial of accused persons, the only practical and safe method of securing convictions is by extracting confessions. Though we are convinced that convictions at such cost are not desirable, yet the premise of the police deserves consideration. It is submitted that two of the greatest defects in the administration of the criminal law are the weak position of the trial judge and the frequency of reversals of convictions due to immaterial errors.

To prevent the "third degree" and trial by newspaper, and to remedy two striking defects in our criminal procedure it is suggested that a statute or statutes be enacted providing for the following:

1. That it shall be a misdemeanor, punishable by imprisonment, for any police officer to exert any force, mental or physical, against an accused person for the purpose of extorting any admission or confession.

2. That any admission or confession made by an accused person in response to interrogatories of the police shall be inadmissible in evidence.

3. That it shall be a misdemeanor, punishable by fine and imprisonment, for the editor of any newspaper to publish regarding an accused person statements or comments which create a belief in the guilt of the accused before his trial, thereby prejudicing him at his trial and interfering with the proper administration of justice. This is an offence at common law (*Rex v. Fisher*, 2 Camp. 563, and *Rex v. Tibbits*, 1902, 1 K. B. 77), but the courts in this country have hesitated to apply it.

4. That the trial judge be given power to declare the law (he has this power in most states) and to comment on the evidence.

5. That no judgment of conviction shall be reversed unless the trial court committed substantial error prejudicial to the defendant, thereby causing a miscarriage of justice.

EDWIN R. KEEDY.

THE PRESIDENT'S ADDRESS.

JOHN B. WINSLOW, CHIEF JUSTICE OF THE SUPREME COURT OF
WISCONSIN, RETIRING PRESIDENT OF THE INSTITUTE.

Members of the Institute:

Our fourth annual session opens under favorable auspices. The Institute may be said to have passed the experimental stage and demonstrated its right to live; its place among the agencies which are making for the betterment of the race is now not only firmly established, but widely recognized; its activities have gone on during the past year with gratifying success; progress has been made, but the field of labor is yet very large; we are met to review the past and take counsel for the future.

It is not my purpose in this address to review the work performed by the various committees during the year. The reports of the committees will speak for themselves when presented and read.

One general observation may well be made here, however; the Institute greatly needs funds for its work over and above the money received from annual dues. It can never accomplish what it ought and desires to do until it has something in the nature of an endowment. Much research work must necessarily be done if the problems before it are to be rightly solved. The members are all busy men; generally speaking, each man is fully occupied with his own work, and can give to the work of the association but a few brief hours snatched from his regular labors. Such men can spend no time in exhaustive research, nor should they be expected to do so. Still less should they be expected to expend their own funds in employing others to do research work. The result is that necessary investigation is not done and the Institute is not accomplishing the results which it might accomplish if endowed with funds. The question whether an endowment for research can be obtained is a question fully as important as any which we have before us, and I commend it to the earnest consideration of every member of the Institute.

To say that we live in a wonderful time is trite, but true as it is trite. The nineteenth century was called the wonderful century. The twentieth century bids fair to eclipse its predecessor in wonders, and the first decade only has yet passed. "The moving finger writes, and having writ, moves on." Thus wrote the Persian philosopher poet centuries ago. It was true then, and true now.

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The finger of human progress is always writing and always moving on. It never repeats and it never obliterates. What is written is written, whether it be for good or ill.

In this second decade of the twentieth century it is writing many things of surpassing interest, but the three words which it writes and which overshadow all others are the words, "Education," "Democracy," and "Service."

I use the word education here in no contracted sense. I mean to cover by it all knowledge, whether it be purely philosophical and abstract, on the one hand, or purely utilitarian on the other; whether gained in the classroom, or in the solitude of the closet; in the laboratory, in the factory, or in the open under Nature's arching sky.

But a few days since it was reported in the daily press that more than 11,000 persons had received instruction in the various departments of the University of Wisconsin during the current year. It seems but a very short time since the number of students at this university was not more than a paltry two or three hundred. The schoolmaster with his primer was said to be abroad a century ago, but where there was one schoolmaster abroad then there are a hundred now. The extension department of the university just referred to through its correspondence school and its traveling professors brings the university to the door of every Wisconsin citizen in a way that would have seemed incredible a quarter of a century ago. Not only do the people come to the university by thousands where they formerly came by tens, but the university now goes to thousands who cannot come to it.

And all this while the correspondence school and extension department are still in swaddling clothes. None can safely predict the future of those schools. If the experience of the past be any fair criterion for the future, there can be little doubt that before many years the extension department will number its students by thousands where it now numbers them by hundreds. Indeed it would be little short of folly to attempt to set any boundaries to its field of usefulness. This condition is not by any means peculiar to Wisconsin, nor to the United States. In practically every civilized state the story is the same, though differing in degree. It is very certain that there will be no retrograde movement. The masses are to be educated, perhaps not deeply nor exhaustively, nor always wisely, but for the first time in the history of the world the great mass of the people are to receive some sort of education. No longer will the poet have occasion to write of the rural clod:

"Who never had a dozen thoughts in all his life, nor changed their course, but conned them o'er from morn till night, from youth to hoary

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age." Such people will not exist, or, if they do, will be so rare as to be negligible.

I am not now concerned with the quality of the education which is being given, nor with the question whether the education is in all cases admirable, or even desirable, but I am simply noting the great fact that the time is very near at hand when practically every citizen, male or female, regardless of station, will not only be able to read and write, but will have such general knowledge on subjects connected with his business or the general welfare, or both, that he will deem himself able to discuss and take an intelligent part in the social and political movements of the time.

Coincident with this wonderful increase of education among the masses of the people is coming also a wave of democracy. Indeed it is impossible to see how it could be otherwise.

The man who never thinks is the contented man; he is the man who does not wish for any share in public affairs, but is willing to let the political boss manage them as he sees fit. He is content that others should govern. The man who thinks, even though he thinks crudely, is apt to be discontented; he sees the defects and abuses in social and political fields, and he clamors for reforms and is ready to do his own share in bringing about those reforms. He is the true democrat. He proposes to do part of the governing. That which promotes individual thinking inevitably promotes democracy; education, even of the most defective character, promotes some sort of thinking; hence it seems that the two must go hand in hand, and that the great democratic movement of the day is linked inseparably with the great educational advance.

In speaking of the democratic movement, I refer not to America alone, but to the entire civilized world. Take the world's map and put your finger where you will, and you will find some phase of it. In Great Britain it takes the form of nullifying the powers of the House of Lords and curbing privilege of birth; in France and Germany it appears in the garb of socialism, and in other countries in various movements all directed with greater or less wisdom to the wiping out of one form or another of privilege. Everywhere there is political unrest, everywhere there is clamor for more direct and complete control of the government by the people. In our own country the democratic drift is perhaps more marked than anywhere else. We have long thought that we in fact had a democracy, or perhaps more exactly, a group of democracies united for self-protection and mutual benefit here on this side of the Atlantic. As a matter of fact there is much in our state and national governments that is not strictly democratic. But unless every

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sign fails we shall have democracies here before many years such as the world has never seen on any such scale before; at least we shall experiment with them.

The democracies which we have had and still have are representative democracies founded on the principle of preserving to the greatest possible extent the rights of the individual. The democracies which are coming, unless all signs fail, are democracies of direct popular action in which individual rights and privileges must give way in very many and very important particulars to regulations and restrictions deemed necessary for the benefit of the great mass of the people.

The democracies of the present enact their laws by representative bodies chosen from the electorate, and delegate many governmental powers to officials or bodies of officials removed by many steps from the direct control of the people. The democracies which are coming propose to place both legislative and executive power directly in the hands of the people, or under their immediate control, so far as that may be possible. The democracies of the past have limited the electorate to male citizens, the democracies which are coming will without doubt welcome to the electorate female citizens on equal terms, not as privilege, but as a measure of eternal justice and right.

The direct primary, the initiative and referendum, the recall, the equal suffrage movement, the election of United States senators by popular vote, the presidential preference primary—all these movements, whether yet adopted or only agitated, are simply manifestations of the overwhelming democratic spirit of the time. Some of them may prove to be mere experiments which will be abandoned after trial, but some either *have* come or *will* come to stay, and, if I mistake not, other changes which will tend to bring the administration of governmental affairs more quickly and completely within the control of the electorate will, at no distant day, be added to them, and ultimately be incorporated in our state and national governments.

I am not now discussing the wisdom of any of the innovations which are coming, or are already here; that would make too long a story for this address. It is sufficient for my present purpose to say that there seems no doubt that they are coming, that they will be tried out, that some of them will be permanent, that they will work important changes in our social, as well as our governmental life; changes which every citizen ought to consider seriously.

The most serious thought which presents itself to my mind as I view these movements for more direct and speedy control by the people of all governmental affairs, is the thought of the increased responsibility of every citizen.

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It has been truly said that the only foundation upon which a democracy can rest is the intelligence and virtue of the people, and this is manifestly true. If it be true of a representative democracy, where legislative and other governmental activities are carried on by representatives with only an occasional appeal to the people, how much more true must it be where the people themselves by initiative, referendum, recall, or other kindred means, keep their own hands directly upon governmental processes.

If the people are to rule in person and not by representatives, a proposition which, as applied to a great and populous state, is difficult but perhaps not impossible, the people must be fit to rule; to be fit to rule, they must be not only educated, but the great mass of them must be honest and law abiding. A pure democracy cannot exist if its electorate be either ignorant or corrupt. If the fountain head be poisoned, the waters of the stream cannot be sweet.

The question whether the American electorate is in all respects fit to assume the duties and responsibilities which must result from the new democracy which is at our doors is by no means free from doubt. We are much accustomed to boast of the intelligence and patriotism of our people, but boasting will be of little account here.

The question is, Are present conditions making for a higher standard of citizenship? Are we sure that we shall have an electorate of a grade which can safely be trusted with the power which the coming democracy proposes to place in its hands?

The question is by no means easy to answer. The most casual and superficial observation shows that great changes are going on in the character of our population, and the conditions which surround the life of the people. From a nation largely composed of rural dwellers, we are rapidly becoming a nation of urban dwellers. Regardless of the difficulties resulting from a vast influx of immigrants whose difference of language, race and temperament make assimilation difficult, it is very certain that we have some perplexing problems ahead of us.

The great city has come and come to stay, and it has brought its great problems with it—problems which will call loudly and more loudly for solution as the years go by. They are the problems of the slum, the tenement house, the social evil, of child labor, of congested population and unsanitary living, of alluring vice in all its phases, and many others, all of which have greater or less bearing upon the physical and mental manhood and womanhood of the race. The sturdy farmer, who is daily breathing in health and strength under the open

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sky, surrounded by the inspiration of Nature's wonders, is giving way to the city dweller, the operative in the great shop, and the thousand and one stunted and narrow-chested workers in the city streets, who just manage to keep body and soul together, and go to bed at night hopeless and wearied, or try to drive away all thought of the morrow by forced and shameful merriment. The picture is not overdrawn, and it is not encouraging to one who is looking for a higher type of citizenship.

I do not say that the moral fibre of the nation is weakening. I see churches, schools and philanthropic societies of various kinds working as never before, but I see also the need of such work as never before. The political condition of most, if not all, of our great cities is distressing already under what is only a representative democracy; what will it be if we are able to have direct democracies and immediate control by the electorate? What will it be when the cleavage between great wealth and abject poverty becomes more pronounced? What will it be if class hatred grows more acute? What will it be if the urban nurseries of crime go on unchecked and the professed criminal classes increase in the future as they have in the past? Who can answer? Certainly not I. It is not pleasant to speak of these things—indeed they are not much spoken of in our best society. People go to their receptions, their teas and their banquets, and talk of the weather, of the last opera, or the latest book. It is far more comfortable to ignore such disagreeable questions as those I have suggested. Yet there will come a time when they must be considered, there will come a time when the wonder will be that anyone could think of ignoring them. It is far better to consider them now and to devise ways and means of correcting them than to let them go on unchecked until they threaten the very existence of all law and order.

So far I have spoken only of the problems which are peculiar to the great city, but there are others which are present not only in the city but in the village and in the country as well, and they also threaten to affect the quality and strength of citizenship.

If I be not greatly mistaken, the great increase of wealth and luxury which has come from the development of our wonderful natural resources has resulted in a perceptible lowering of ideals. Our forefathers struggled for very existence in the face of tremendous difficulties; they subdued forests, endured the privations of the frontier, and in the midst of toil and privation laid the foundations of the state that was to be. Amid such labors and privations it was natural that they should develop the sterner elements of character, the elements of fortitude, both physical and mental, of self-control, steadfastness and probity of purpose.

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We who have entered into their labors and are reaping the results of their self-denial, either by way of making gain from vast business enterprises or dwelling in an atmosphere of ease or luxury which they made possible, are quite likely to have our thoughts directed to the material things—the things which make life pleasant and enjoyable, to the neglect of the sterner virtues. Surely I am not wrong when I say that this tendency is noticeable on every hand, nor am I wrong when I say that in it there is greater danger of a loss in sturdiness of character.

Now we cannot make any appreciable change in the material conditions of the age in which we live. We cannot go back to the days of our fathers if we would. "The moving finger writes, and having writ, moves on,"—not backward. The great city will become greater, the opportunities for the acquisition of wealth will not decrease, but rather increase, the use of the conveniences and luxuries which modern life places within our reach will not cease, the temptation to live a life of ease and pleasure, regardless of the cry of the unfortunate and afflicted, will be just as strong. How are all these weakening tendencies to be met and overcome? How are we to make sure of that high quality of citizenship which will be necessary in such a democracy as we shall have?

This question is probably not capable of an authoritative answer in a single word, nor shall I attempt to give one, but the word which comes nearest to it is the third word which the moving finger of progress is today writing, namely, the word "Service."

For centuries individualism has been the keynote of civilization, especially in this land which has boasted so loudly of its freedom and equality. We have gloried in the idea that every man was the master of his own destiny and must fight his battle alone; we have seen the struggle for wealth and social distinction—nay, even for the necessities of life become fiercer and fiercer, and we have condoned the ruthless cruelty and selfishness of it all on the ground that all citizens have equal opportunities and that the triumph of the strong and the trampling down of the weak is but the working of nature's immutable and righteous law.

But the consciousness that man cannot live for himself alone has come at last; the public conscience is awake; we now for the first time realize faintly and imperfectly the marvellous significance of the parable of the good Samaritan. We are learning who are our neighbors, and we are realizing that an injury to "one of the least of these" is an injury to society as a whole.

The trumpet call of service to fellow men is sounding today as it never has sounded before since the days when the great Master trod the

shores of Gallilee. Thousands of men and women with the spirit of Christ in their hearts are hearing the call—men and women who could if they chose be clothed in purple and fine linen, and fare sumptuously every day. But they have chosen the better part. Comparatively speaking, their work has just begun and yet there are results to show. The slum is yielding to the settlement. The haunts of vice in the great cities are still practically untouched, but there is handwriting on the wall, and the waves of an awakened public sentiment are rising with ominous strength. Everywhere earnest men and women are banding together and devising ways and means, either by way of legislation or agitation, or both, by which moral standards shall be raised, the frightful injustice of modern life in the great cities shall be corrected, disease vanquished, vice made hateful and life made to hold its promise of hope and joy to the most unfortunate.

So significant has the great social service movement become that a political party, appealing to the electorate of the nation for support, has recently been formed with a platform which pledges the party to work unceasingly, both in state and nation, for social and industrial justice along numerous lines which it names, and along most of which work has already been begun. Strangely enough, the platform omits all reference to that important phase of social justice represented by this institute, namely, the improvement of criminal law and procedure, so that certain and speedy justice shall be attained.

Whether such a political party was necessary or not is doubtless a question which is open to serious debate; very much of the work which it approves and incorporates in its platform is already under way and supported by citizens of all parties, but the mere fact that such a platform has been made and a new party founded upon it is very significant as showing the changed condition of the public mind. Fifty years ago the attempt to form a party upon such a platform would have been regarded only as the chimerical dream of a political visionary. Now it is received seriously and with a considerable measure of public approval, as far, at least, as its social service program is concerned.

The present movement for prompt, scientific, and at the same time, humane treatment of the criminal is unquestionably part and parcel of the great awakening of the public conscience. It takes its place with the other contemporary movements for better citizenship with entire confidence in its right to that position.

If there be any questions of greater importance to society than the questions which cluster around the criminal law and its due enforcement, I know not what they are.

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They are questions which go to the very foundations of all social order. If our criminal laws are not just and scientifically correct, in principle; if their administration is, as President Taft said not long ago, a disgrace to our civilization; if we are year by year building up in our midst an ever increasing criminal and degenerate class whose members are predestined to crime from their very birth, it is surely time that we considered the subject seriously, if not prayerfully.

It must be admitted, I think, that we have been singularly slow in appreciating the defects in our criminal jurisprudence. Indeed we have been accustomed to regard ourselves as possessing well nigh perfect methods of dealing with and punishing crime. We have gloried in our Anglo-Saxon heritage of the common law, our trial by jury, our constitutional guarantees against medieval abuses, and we have rested secure in the fond belief that there could be no improvement, and that other nations possessing no such ideal systems were justly the subjects of our pity.

It is not pleasant to be awakened from a beautiful dream, but if it be a false dream of security when danger impends, the awakening cannot come too soon. That our dream of practical perfection in dealing with crime was in large measure ill-founded cannot be denied; how the defects in the system may be remedied is the important question.

The ideal treatment of the supposed criminal must be prompt, just, scientific, and humane; it must result in the protection of society from violence and the gradual decrease of crime.

The criminal code which will accomplish this desired result should in my judgment contain certain essential features which may be stated in general terms as follows:

I. It should be simple and easily understood, not only in its procedure, but in its definitions and statements of substantive criminal law.

II. It should provide for the prosecution of all crimes by information; if indictment by grand jury be preserved at all, its use should be optional with the trial court.

III. It should give the trial court plenary power to amend indictments, informations and all other proceedings, at any time during the trial or after verdict in furtherance of justice, care being taken to preserve the defendant's right to know the nature of the charge made against him, and to have the amplest opportunity to make his defense.

IV. Distinction should be made between confirmed criminals and those of whose reform there is hope, and the means should be given to the trial court to ascertain in which class the convicted person belongs.

V. Confirmed criminals, of whose reform there is no hope, should be effectually and permanently segregated from society, so that they may neither continue the race of criminals nor instruct others in their nefarious business.

VI. As to first offenders and other persons of whose reform there is substantial hope, the courts should have power to suspend sentence indefinitely and place such persons under the supervision of probation officers, or commit them to reformatories specially designed for such offenders, where there is opportunity for discharge upon parole.

VII. The trial court should have power to suspend sentence after conviction, in case of youthful first offenders, and cause an investigation to be made by medical and psychological experts, to the end that if it appear that the criminal act was not committed with deliberate criminal intent, but was rather the result of unfortunate environment, or misfortune, or temporary lack of mental balance, the court may provide for disciplinary, therapeutic or reformatory treatment, instead of imprisonment.

VIII. Juvenile courts should be provided for child offenders, where they do not now exist, endowed with the broadest powers, enabling them to treat the erring child sympathetically and mercifully, and apply the proper reformatory or disciplinary measures rather than imprisonment in jails or bridewells with the harlot and the drunkard.

Power should be vested in the court or in some other officer or board, to prevent by segregation or some other efficient means, the imbecile and the degenerate criminal from returning to society or propagating his kind.

X. I think (except as to capital offenses) the court should have power to impose an indeterminate sentence, leaving the question of length of term to a board acting on accurate knowledge of the criminal's history, behavior and apparent progress toward reformation.

XI. Whether the principle of the indeterminate sentence be adopted or not, power should be vested in some responsible and discreet board in cases where reform is possible, to parole prisoners under proper supervision, and perhaps there should be provision made for the granting of a certificate of rehabilitation of character by the trial court after a sufficient lapse of time and assurance that reform is complete.

XII. There should be no absolute right of appeal on the part of the defendant, except, possibly, in capital cases; in other cases an appeal should be had only when the same is allowed by the trial judge, or by a judge of the appellate court.

XIII. No judgment of conviction should be set aside for error

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unless it appear affirmatively to the appellate court that the error caused a miscarriage of justice, or seriously affected the defendant's substantial rights.

XIV. The state should have a right to obtain a review in the appellate court of rulings resulting in the discharge of the accused because of supposed error or defects in pleading or procedure.

XV. Power may well be given to the appellate court, in cases where by inadvertance the proof of some material fact has been omitted in the trial court, to receive the proof, ascertain the fact and enter the proper judgment rather than to reverse the judgment, and order a new trial in the trial court.

I do not assume by any means that the foregoing propositions cover all the requisites of an ideal criminal code, nor all the questions which may properly be considered by this association, but I simply present them as covering the more obviously important general propositions for which the institute is working.

From them it is not difficult to state the general nature of the service which the institute hopes to render to the social fabric; it hopes to make the administration of the law simple, the results certain, prompt and just, and mere useless delays impossible, remembering at the same time that speed is desirable only when it is accompanied by justice; it hopes permanently to remove from contact with society the confirmed criminal and the moral degenerate, and ultimately to eliminate the criminal class; it hopes to abolish the practical seminaries of crime now existing in the penal institutions where all classes of criminals are indiscriminately massed together; it hopes by the wise use of the parole and probation system to make reform of first offenders the rule and not the exception; it hopes to apply scientific methods to abnormal offenders and to provide for such offenders such therapeutic, disciplinary, or segregative treatment as expert advice shall indicate to be the best means of restoring them to a normal condition; it hopes to surround the juvenile criminal with the sympathetic care of a foster parent and to rescue it from a career of crime rather than to consign it to the company of abandoned criminals where an advanced education in crime is inevitable.

Any organization which can efficiently aid in producing these results will be entitled to the gratitude of every citizen; it will render a service to society, the importance of which can hardly be overestimated.

PROCEEDINGS FOLLOWING CONVICTION.

FRANK L. RANDALL,

General Superintendent, State Reformatory, St. Cloud, Minn.

The observations which I am privileged to submit to this annual meeting of the American Institute of Criminal Law and Criminology, and to the Wisconsin Branch of that organization, will be directed mainly to facts and conditions regarding the product of the Criminal Courts, and their proper management and disposition.

Whatever information has been gathered is the result of experience in the practical field, and the writer undertakes to avoid the statement of alleged facts not probably established, or the expression of opinions not properly fortified.

The official experience referred to has been confined to one of the northwestern states, but the evidence indicates that, in large measure, the conditions there existing, are general over a considerable scope of territory, and not wholly unknown in any part of the Union. Where civilization exists, there are rules of action, and where there are regulations and men, some of the men will sometimes violate some of the regulations. Therefore, there are jails, courts and prisons, and now probation and parole officers. All these should be adapted to dealing with the men who have been disobedient, and who are adjudged to require correction or detention.

In these days of liberty of conscience and freedom of speech, it may safely be said that crime is folly, and that it is not the outgrowth of conscientious consideration by rational and well-disposed persons. Those whose acts are most tinged with folly are usually the most foolish. The contest against crime is met by unorganized and largely unorganizable forces, which are more marked by incompetency, degeneracy and regardlessness, than by aggressiveness. Crime is committed by men who are descending, not by those who are rising.

Felons in confinement are mostly unskilled in industrial handicraft, or in any other substantial or useful occupation. They grade low in the school of letters. Their moral principles are largely unreenforced by moral instruction, and are dim and insecure. Their religious affiliations have been severed, or were non-existent. They are untidy in dress and demeanor, unfamiliar with, or unobservant of the amenities of life, improvident, undisciplined, superficial, ungrateful, selfish, and coarse. All along the line there are exceptions. This paper is not designed to

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deal largely with exceptions. Many men who are not convicts are likewise faulty, and might be considered simply rather as low grade citizens. They are without means, do not value or carry letters of recommendation, and cannot honestly show prior good character and record.

In the courts where charges were preferred against them, none of these things were presumed, but rather the contrary. They were protected beyond their worth by presumption and exemption, which caused the release of many other men, no more guiltless than themselves, and they know it. They have a higher appreciation of the maxim that it is better that ninety-nine guilty men should escape, than that one innocent man should suffer, than they have of the fact that if ninety-nine guilty men do escape, more than one innocent man will suffer. Their home ties are largely broken, by death or otherwise, and they insist strongly on what they believe to be their rights, while disregarding the rights of others. Their oblique conduct, or the prospect of it, might have been early forecast by one familiar with them. Tests which are now coming into fairly common use among advanced penologists, indicate that many convicts, through retarded development or congenital deficiency, are children in mentality, and must so remain to the end. Satisfactory tests of moral equipment and tendency will no doubt ultimately come into practical utility. This field now invites the student.

On the other side of the picture it may be said that many felons are cheerful and obliging, with good intentions, and a desire to improve. Some of them are industrious when at work under favorable and respected direction. Some, when sober, are good men in almost every regard, and others are pleasing and likeable when not angry or irritated. Fidelity may be found among them to an unexpected degree, particularly fidelity to the person, and so many others of the higher virtues, as well as the commendable traits that dignify men above their average fellows. This is particularly true of men who commit assaults upon other men. Some of them are so much like persons we know and esteem, that the court record discloses almost the only difference. This is written to indicate that the only classification to which convicts can be properly assigned, must be based on their understood individuality, and there must be numerous classes, or none at all. Let there be none.

The men with whom we deal have been arrested on the complaint of some person who has felt aggrieved by their conduct, and against whom they themselves often feel a grievance, or more rarely, upon the initiative of a peace officer. The latter is much better in its effect. They have been confined, idle, without opportunity for physical exercise

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even, in an unfit jail, for perhaps a length of time sufficient to debilitate them, and with associations that tend to demoralize. They have seen the prosecuting attorney in court, not as a friend, nor as one having an interest in their future, as is the case in juvenile courts with the youth unrepresented by counsel, but, to them, apparently hostile to what they deem to be their best interest. In some instances, they have believed the question of their disposition to result in a contest between rival members of the bar contending for public approval and reputation, and they experience little gratitude for the efforts of their own attorney, and small respect for any lawyers. They are much displeased and disappointed when their counsel loses on a technical defense, and wish to argue the matter with all comers.

Discountenanced, whipped, and without courage, but more or less desperate in soul, they pass before the court for sentence. The judge is a stranger to them, but no more than that they are strange and strangers to him. They have been proven to have committed a certain act at a certain place, on one of the hours of one of the ten thousand days of their lives. That is all that is necessary. Often that is all that is shown or known. Each man of them has given a name, but names are easy to give. I venture to say that, in some cases, if two prisoners should exchange names at the right time, and insist upon it, they might easily exchange sentences and imprisonment, so little is sometimes known of their identity; and the criminal population seems to come more and more from the vagrants. Possibly it is more accurate to say that criminals are more and more inclined to travel, with the improvement in means for transportation. The prisoner's statement can be taken by the court, if the prisoner feels disposed to make it. The word of a convicted and unknown man is not very good when he comes before the court for sentence. If he makes a statement he is not likely to color the facts to his own disadvantage, and the court, having no opportunity for verifying the truth nor for establishing the falsity of what he says, must judge him more by the manner of his speech, than by its substance. This is often the condition of things when the judge approaches his unscientific duty.

He is about to sentence for a fixed length of time, to an institution with which he may be unfamiliar, a man whom he does not know, and upon whom the effect of the prison regime cannot be told in advance. The sentence is imposed "as punishment for the crime of which he stands convicted," and is to "hard labor." Though many judges may take the opportunity to counsel the defendant at this time, it is not a

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part of the formal requirements to hold out to him that society has any interest in him, except to cause him to suffer for what he has done, and it is the understanding that his labor shall be hard, whatever the quality of his food and bed may be, or his condition of health and strength.

The prisoner goes from the court feeling that he has left no friends behind, and need not expect to meet any when he is registered in, and numbered at the prison. He thinks his conviction a greater misfor-

¹Annual address at the fourth yearly meeting of the Institute at Milwaukee, August 29, 1912.

tune to him than his criminality, and his friends, if he has any, and the public at large, seem to feel the same way.

The good and learned man upon the bench half consciously feels that this is the part of his work which is unskillful, and that he likes it the least. But as it is a part of his work, and is required by law to be performed, he, as a faithful servant, performs it, as his predecessors in office did before him, as well as he can, and hopes for the best, and experiences a sense of relief when he turns to the civil calendar.

I am sure that there are many men in this presence who have sat upon the bench and pronounced sentences, who would have been glad to have told the unfortunates, that, for their correction and welfare, as well as for the interests of society, they would be committed to the custody of a commission of experienced and thoughtful men, who would so order the matter that such necessary detention as they were to undergo, would be in the place or places best suited to their needs and capabilities, where they would have ample opportunity to improve themselves in every proper regard, and every incentive to avail themselves of their opportunity; and that as soon as, and not before, they should make an affirmative showing entitling them to partial liberty on parole, they should have it, and go out to honorable employment.

If there is a trial judge or ex-judge in attendance upon these sessions, who feels satisfied with the procedure under which he has acted prior to the coming in of the indeterminate sentence law, it is my hope that he will not fail to express himself to that effect at an opportune time before we return to our homes. This is not a challenge, but a request. Heretofore in distinguished assemblages, but perhaps in none so distinguished as this, no apologist has declared himself for the substitute procedure already referred to though many have questioned its wisdom or feasibility.

At the organization meeting of this institute at Chicago, I had the honor of presenting for consideration a theme embracing a method of procedure which I now submit, but more fully, to your consideration.

The judges and lawyers are experts in determining an accomplished fact. No other persons are equally skillful in that regard. The work therefore of determining whether or not an unlawful act, involving serious moral turpitude, has been committed, and, if so, by whom, must necessarily be left to the courts, and the court's officers, as it always has been. When the commission of the wrong, and the identity of the wrongdoer have been established, nothing should remain for the court to do but to commit the defendant to the custody of a commission charged with the responsibility for his care and custody until his final release from the jurisdiction of the state.

One exception should be here noted, based on the fact that imprisonment is an artificial and abnormal condition, and that, *per se*, it is not good; it should be resorted to and justified only when necessary and to be preferred to the continued liberty of the delinquent.

Therefore, when an application is made for probationary liberty, before commitment, the court should hear and cautiously determine the matter, but, when a determination has been reached adverse to the applicant, the work of the judiciary should be closed with the passing of the defendant into the custody of the commission.

Under this system the defense of insanity would not be heard in court, nor the fact of mental irresponsibility. Such matters would be quite immaterial at the trial, and would be considered at a later date by public servants, charged with a peculiar and continuing duty and responsibility in that connection, and equipped with all facilities for deliberately determining the subject's condition. The fact that the crime had been committed by him, and that it was necessary to the interests of the public that he be restrained of his liberty, to the end that he could not repeat his wrongs, would be as far as the court would go with him. Whether a man is dangerous because he is insane, or intoxicated, or whether, being sane and sober, he is dangerous because he is vicious, makes him an equally undesirable man to be at liberty, and equally calls for his restraint; the only difference being in the place to which he should be committed, and the treatment that should be given him.

The penal institutions should be for the care and treatment of acute cases only, while a custodial asylum should be for the chronic offenders, who have demonstrated their incapacity or viciousness, or their corrupting influence, and for those in whose future no prospect of good citizenship can be discerned. That there are many such persons every warden knows. Commitment to the custodial asylum would not be tantamount to life imprisonment, but it would continue until such time

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as a change might come, when a transfer might be ordered, or liberty within severe or easy limitations, or even an absolute release, might be determined to be best.

This part of the work can be better performed by the commission than by the court, for the court must act promptly, and on limited data, and in the way of prophecy, while the commission would place the person under observation and examination, and dispose of him as seemed best, having full power to transfer him from one institution to another, as his changing condition, or the judgment of the commission, might indicate to be proper.

This plan, at its best, would do away with minimum and maximum terms of imprisonment or treatment, and would mean the application of good sense in dealing with the anti-social and non-social. Then no person would be kept in detention unless a good purpose would be served thereby, and no person, properly imprisoned, would be released except for reasons which would appeal to the minds of well informed men; for it will be understood that the commission would be made up of the best available men, and that they should devote their entire time to their official duties.

To be properly equipped for service the state should provide a receiving station, to which would be taken all convicted felons, who are not placed on probation (and many misdemeanants also), in the care of officers appointed by the commission. Many persons thus received could be assigned, without much doubt or delay, to the prison, the reformatory, the school for feeble-minded, the industrial or training school, the state farm for inebriates, the colony for epileptics, the hospital for the acute insane, or to the state custodial asylum; an institution which every state should have, and which should, in time, have a larger population than both the prison and the reformatory.

Recidivists in misdemeanors should be decreed to be felons, and should be saved, as far as possible, from the consequences which follow their weaknesses. No more would we then read, in the report of a county workhouse, that over three hundred persons had each served more than fifty terms therein. As no sane or competent person will serve repeated terms in a workhouse or jail, repeated convictions should be accepted as strong evidence of helplessness, and conclusive evidence that the person needs attention and aid.

Border line cases between badness and madness, or between weakness and viciousness, could be longer detained at the receiving station, for observation sufficient to prevent serious misfits at any of the other

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state institutions, but the more extended work of observation and inquiry should be continued in each case after the delinquent has been assigned to one of the special state institutions.

A normal person, who is convicted of crime and who refuses to establish his identity after he has had time to learn that the authorities wish to serve as his friend, is invariably one whose record has not been clear, and will not bring him credit. Such a person is entitled to no special favor. With the removal of the maximum term, and the substitution of the so-called indefinite term, and with a firm stand against any parole to unknown persons, he would make the necessary disclosures, unless he feared a transfer to a jurisdiction where his status would be still more unpleasant.

With the maximum term of five years, hardly one per cent of reformatory inmates will now hold their secret, if proper means are taken deservedly to win their confidence.

When identity has been established, and the life history, more or less truthful, has been entered in the record, a basis has been laid upon which to build the full story. Repeated interviews will, in some cases, be necessary, and much correspondence must ensue, and perhaps some visits must be made, but, in the end, the man will be known to the authorities, for while this work has been going on, the institution physician, psychologist, teacher, chaplain and keeper have been getting acquainted with him in their several capacities, and submitting helpful reports from time to time. The commission will make mistakes in their original assignments, but these can be readily corrected by a transfer. Men in one institution will advance or retrograde, so that they may more properly be placed in another, but this fact would not constitute a problem, as it now does in so many states.

As one who has spent more than twelve years in direct dealing with delinquents (an exhausting work from which he expects soon to retire), and who has learned the backwardness of the art of penology, and who has some appreciation of the miseries of the wrong-doer, and of the rights of society, I freely declare that the result of my observation and reflection, as an officer of the court, and as a warden, is, that some system akin to what is outlined above, is the only thing that seems to me to promise well in the matter of terminating the active career of the professional criminal, discouraging the coming of foreign criminals, properly disposing of recidivists, paranoiacs and other corrupting and menacing incompetents, and doing justice, and giving necessary aid and encouragement to those who appear to carry a credit of virtue or merit above what may be charged against them.

DISCUSSION

It has been urged that this plan is revolutionary, and that its adoption and enforcement will meet with constitutional obstacles. Let it be admitted that it is revolutionary, but at the same time, let it be proclaimed that the present system is not a success and that we are looking for better things.

When constitutional questions arise they must be dealt with in the different jurisdictions. They are not for discussion to-day. In some states they may be readily overcome, and in other states more pains and patience will be required. Movements of this kind are not quickly brought to a consummation.

Another objection is that the judges have been men of such quality that the people repose singular trust in the integrity and ability of the courts, and would not be content to have the powers of a commission exercised by others than judges.

This difficulty, which may be more apparent than real, could be met by a provision that the members of the commission, or some of them, should be appointed from the judicial officers, with a salary which, together with the importance of their new work, would make the service attractive to those whose humanitarianism is peculiarly controlling.

As a matter of fact, the proposed plan, to some extent, is now in operation, though the commission may bear a name not clearly indicating its duty and authority, and though it operates under needless and awkward limitations, and is generally made up of men who are charged with too much other work to permit them to give the personal attention and service to their wards that would accomplish the most good.

These are the days and this is the organization in and by which improvement and progress should come, but if we allow ourselves to be diverted from the open path, another generation may come and go before the necessarily hard and discredited methods of our grandfathers' time shall cease to impose needless loss of men and substance upon the state.

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Mr. Randall's address was opened for discussion. Mr. C. W. Bowron spoke of the heterogeneous population of defective, insane, epileptic, weak-minded, and vicious, together with the accidental criminal, the boy without a home, without a father, without a mother, without any of those agencies and influences about him that give him any foothold or any moral standing even in the community in which he lives—who go into our prisons. They seethe in ignorance and vice.

"Consider the position of these defectives that come along to us 23, and 24, and 25 years of age, with the mentality of a child of eight or ten, who must be dealt with along with others in our prisons. Mr. Randall has pictured

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these conditions to you in his paper and has made tentative suggestions that you ought to think about. What can a trial judge know about the antecedents and the hereditary proclivities of any man before him? Your very rules of evidence cut out from you and from the jury and from everybody, everything about that man's previous life history. He stands there perhaps charged with or convicted of one single thing. You know nothing about the hundreds of other things connected with his history. You know nothing about his home life; you know nothing about the brutality of his parents; you do not know what that child has had to bear with from the cradle to the court. You sentence him without any knowledge whatever of his condition mentally, physically or morally, just to preserve a court's 'prerogative.' * * *

"The address we have listened to from the chief justice of Wisconsin touches the question of education. Of the victims you send to the reformatory, 25% cannot read or write. You send them there for a year, expecting to teach them to read and write, and to rehabilitate them, in twelve months, notwithstanding that according to your own law they can stay there only eleven months; and according to the parole law they may come out on parole in nine months. Is that logical or scientific?"

Continuing the discussion it was brought out by Judge Carter of Illinois, that it is not the courts that are assuming this responsibility. It is our system of government, and if we are wrong, we ought, by a system of education, by a system of experimentation, if you will, by a system of study, to change this system and put it upon the right basis.

Judge Gemmill of Illinois, said that the trouble is not with the judges who fail to get at the cause of crime in the particular case. They are doing the best they can. The difficulty is with the state and with the penal institution. "We have no institution that is fitted and proper for the average person who is brought into our courts. For instance, Mr. Bowron speaks of those who are mentally weak, of those whose education and environment from childhood up had been such as to give them a criminal trend; of the large number who are sent back to the house of correction or to the penitentiary, or to the workhouse over and over again. We are compelled to do that very thing, because the state has not provided the proper institution to which they may be sent. There is hardly a state in this Union that has provided a proper place to which we can send these weak-minded people. I am not speaking of the insane; I am speaking of this great army of weak-minded who lack stability of character; persons who are simply so weak that they follow along a criminal road. There is no institution to which to send them except the penitentiary, the reform school, or the workhouse. What we need more than anything else is proper institutions—such as have been established throughout England, such as Switzerland has had for many years in Basle and Berne, such as Germany has now in a dozen different places—where these people can be taken care of."

Judge Charles A. De Courcy, of Massachusetts, spoke as follows: "I think today the most important problem that confronts this, and like organizations, is that of suggesting the ideal prison system; it does not exist in this country nor anywhere else; there has been no substantial light thrown on the subject as a whole. I know no more important immediately practical question confronting us than the formulating of the ideal prison system for a commonwealth.

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"We have taken up the matter of criminal procedure through the American Bar Association, and elsewhere, and it is safe to say that in a majority of the states there is little cause for complaint today in the matter of pleadings or generally of the procedure in the criminal court. They have been made simple, as far as we are concerned with the selection, from among those arrested, of the ones who ought not to be committed to prison. The probation system has long gone beyond the experimental stage and today is doing its work effectively and well in a majority of the states of the Union.

"In connection with that, following what Judge Gemmill says, I know of no judge who sits in a criminal court who does not feel it is his duty religiously to follow out and have a personal investigation made as to the surroundings, past history, and possibilities of every individual who comes before him for sentence, before he determines, first, whether that person shall be placed on probation; or if not, to what institution and for how long a time he shall be committed.

"Then begins difficulty. We have gone further than that in some states. We already have eliminated the insane. A man found insane either before trial, or found insane by the jury after trial, or even subsequent to sentence, is sent to a proper institution for the treatment of the insane.

"In some states, and I can speak of one at least, something practical has been done with reference to the feeble-minded. Not only are those known to be feeble-minded sent to an institution where such cases can be properly treated, but now in our prisons generally, under a recent act of the legislature, investigation must be made of every case that suggests feeble-mindedness. Some proper treatment must then be provided in that institution, or in a special institution provided for the care of the feeble-minded. We are making progress in that line.

"But there remains the great broad field of the average criminal, not insane, not feeble-minded. What are you going to do with him?

"I think we can start off with the proposition that any prison that is not designed and equipped to send men out better than they came in has no justification for existence. If you accept that proposition you must classify your criminals. You must provide proper institutions in which you can place the different classes; which have proper equipment, educational facilities, manual training, learning of trades, moral instruction, proper officers and proper discipline, to carry out the purpose with which you started in order that the person selected and properly sent to this particular institution shall have the very best treatment to bring about the result of making him fit to go back to society. Under the plan of the indeterminate sentence you must keep him there, or where he belongs by transfer, until he is fit to go back a self-supporting and respectable member of the community, if he desires so to be. I believe that that problem suggested and somewhat amplified by Mr. Randall is properly stated. I would not agree in all the details with his statement, perhaps, but the general proposition is true; you must have classification in prisons adapted to bring out the desired result in your several classes. Then under a proper provision of supervising parole send them out with sufficient means and proper provision made, so that they will have a fair chance to start in life again and carry out the good resolutions with which they leave the prison.

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"I believe this institution might well take this matter up as the work of one committee for the next year, to formulate something for discussion, so that eventually we may say: 'Here is our idea of what a state ought to provide in the way of institutions for taking charge of those who ought to be committed and deprived of their freedom.'" •

Judge Stevens of Wisconsin, Miss Taylor of South Dakota, and Mr. Hall of Colorado, continued the discussion.

It was ordered that the recommendation in Mr. Randall's address be referred to the proper committee to be named later.

A PROGRESSIVE PROGRAM FOR PROCEDURAL REFORM.¹

NATHAN WILLIAM MACCHESNEY.

Member of the Chicago Bar.

Public Interest in Law Reform.—If the newspapers and magazines of the country are any criterion as to what the people are thinking about, aside from the exigencies of a political campaign, their chief concern at the present time is the courts and the administration of the law. I do not propose to go into a general discussion of this question at this time, but desire to confine my attention to particular problems connected with the criminal law and the underlying causes which create the condition that necessitates its constant application.

No one will deny that popular dissatisfaction with the administration of justice, civil as well as criminal, has grown alarmingly in the last decade. The attention of the people has been directed consistently to the enforcement of our criminal law and the demand has not been confined to any class or section of society nor to any particular section of the country. It has been universal in its scope.

The Criminal Law Problem and Some Suggested Remedies.—Before the Academy of Political Science in the city of New York last year, I summarized the demand as follows:

First: A general insistent demand for a simplified procedure.

Second: A widespread insistent belief that the courts shall be responsive to the enlightened social conscience of the day.

Third: A demand that higher standards shall prevail at the bar, in order that persons with anti-social tendencies may find it impossible to secure men of standing and training to promote violations of the law and to render their punishment impossible.

It is easier, however, to define the problem than it is to suggest any solution, for while the demand expressed in general terms is almost universal, when it is attempted to embody this desire in concrete reforms, difficulties at once arise. Among these are:

First: The fact that as usual when legislation is proposed, it is always desired that its application be limited. The general demand frequently invades what is regarded as the rights of a particular class in the name of the majority. Almost every portion of the community is now and then a class minority.

Second: The fact that in framing the new laws one of several methods must be selected, and the advocates of each are as bitterly

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opposed to the particular methods suggested by other factions as they are in favor of a remedy for the evil at which all are aiming.

Third: The lack of political value in such legislation is another difficulty. Our legislators are prone to give time and attention to matters which attract public attention and are disinclined to give a proper amount of time to laws dealing with the minutia of criminal administration.

De Tocqueville in his *Democracy in America* (January, 1835), speaks of this difficulty of securing interest in the execution of the law and the conduct of public administration. He says:

"As the majority is the only power which it is important to court, all its projects are taken up with the greatest ardor, but no sooner is its attention distracted than all this ardor ceases; * * * * *

"In America certain ameliorations are undertaken with much more zeal and activity than elsewhere; in Europe the same ends are promoted by much less social effort, more continuously applied."

Fourth: A fourth difficulty is the lack of proper standards for practice at the bar, which results in a type of lawyer, oftentimes, who regards the present chaotic condition of our criminal law and administration as a trade asset.

Fifth: The fear that any stiffening of the process of the criminal law may be an invasion of the rights of the individual, which is likely to lead to a great deal of sentimentality in the discussion of these questions.

In spite of these difficulties, however, men of training and energy must attack the problem, for the growing distrust on the part of large portions of the community of the efficacy of our entire system of dealing with the criminal law and the criminal, is apparent.

This distrust is an ominous symptom, particularly in as far as it is an endorsement of the saying of Solon of two thousand years ago that "laws are like spiders' webs which catch the small flies, but through which the great flies break." There are many of us who believe that this saying, applied to present conditions, is untrue. But whether true or not, it has some basis in fact, and as long as it is believed by any considerable number of the community, it lowers public respect for the law, affects the standing of the bar, and renders still more difficult the proper enforcement of the laws we already have.

We are told that the civil procedure of Kansas has solved most of the difficulties which beset us elsewhere,¹ and I hope that with this experience on the civil side that Kansas will attack the criminal side likewise, and furnish some model legislation as an example to the rest of the

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country. It is to progressive states, such as Kansas, Oklahoma, Wisconsin, and even Massachusetts and New York to which we must look for suggestions as to the proper remedies. My own state of Illinois still has the procedure of England, at the time of George the First, the last vestiges of which were abandoned by England in 1873 by the passage of its Judicature Act.

It may be well for me, however, in passing, to say that I think that the enthusiasm of some of our students of English and continental systems has led them too far in their statements of the results of the Judicature Act in England. I have seen it stated in the public press that the criminal business of England was conducted by something like eighteen judges with entirely satisfactory results.

The fact of the case is that something like 20,000 men hear criminal cases in England, and the criticism of the administration there is almost as severe as here, showing that we have much more to do than merely to copy a system which is supposed to work satisfactorily elsewhere.

Those who are interested in this general question of the effect of the English procedure should refer to the report of Professors Lawson and Keedy to the American Institute of Criminal Law and Criminology, on the subject of Criminal Procedure in England, appearing in the *Journal of Criminal Law and Criminology* for November, 1910, and January, 1911, and for a less favorable view to the analysis of the English Procedure by Judge William N. Gemmill of the Municipal Court of Chicago, which appears in the *Illinois Law Review* for February and March, 1910, and a later address given by him before the Illinois Society of the American Institute of Criminal Law and Criminology on May 10th, 1912.¹

From time to time various measures have been recommended to remedy the conditions, and of these I desire to call your attention particularly to the following:

First: No judgment should be set aside or reversed, and no new trial granted on the ground of misdirection of the jury, of improper admission or rejection of evidence, or of error in any matter of pleading or procedure, unless it shall appear to the examining court that such error has affected the substantial rights of the parties. The original suggestion for a provision of this kind was made by President Taft, was then recommended by the American Bar Association, and in 1911 was enacted by the Congress of the United States, so that it now applies to the Federal courts. In some states constitutional changes may be neces-

¹Delivered before the first annual meeting of the Kansas State Society of

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Criminal Law and Criminology, held under the auspices of the University of Kansas at Lawrence, Kansas, on May 17-18, 1912.

²Sometime President, American Institute of Criminal Law and Criminology. The Judge Advocate General of Illinois. Commissioner on Uniform State Laws. Sometime Vice-President, Illinois State Bar Association.

¹Report of the committee of the Kansas Bar Association on Crimes and Criminal Procedure, by William E. Higgins in Journal of the American Institute of Criminal Law and Criminology III, 1, 12 ff.

²Procedure in Criminal Courts, by William N. Gemmill, Journal of the American Institute of Criminal Law and Criminology III, 2 (July, 1912, pp. 175 ff.)

sary to allow consideration of the facts by an appellate tribunal in order to make this provision effective.

Second: The right of the prosecution to comment upon the defendant's refusal to testify should be secured.

Third: The right to use private confessions obtained by officers of the law, (commonly called the "third degree") should be abolished. The doing away with the private confession and granting the prosecution the right to comment upon the defendant's refusal to testify should have important results. The defendant will testify more often than he does under the present rule and the prejudice aroused against the prosecution, due to the use of such private confession, will be eliminated. A resolution on the subject of third degree confessions was presented to the American Bar Association at its meeting in Boston in August, 1911, but was acted upon adversely. Nevertheless, such confessions are often obtained under conditions which ought to discredit them.

Fourth: The same right of change of venue should be given to the state as to the accused, and removals under proper restrictions, from one county to another should be allowed.

Fifth: The provision requiring a unanimous verdict should be done away with, and in all excepting capital cases, a three-quarters verdict should be allowed.

Sixth: The amendment of indictments should be allowed at any time, provided the character of the charge be not changed, and provided the accused be given the right to prepare any additional defense made necessary by such change. No substantial rights of the defendant would in any way be sacrificed by such a provision, and those disreputable and disgraceful cases in which convictions have been set aside on the ground of some trifling technical error in the indictment would be done away with.

Seventh: Instructions should be prepared by the court, with the assistance of counsel, who should thereafter be limited to objections

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raised at such time. We are all familiar with the system of oral instructions used in the Federal Court (though I do not know what your Kansas practice is in such matters) and we have found in connection with our Municipal Court in Chicago, that the giving of oral instructions and the limiting of counsel to objections then and there raised has greatly facilitated the trial of cases without in any way sacrificing the legitimate rights of the defendant.

Eighth: The power of the trial judge should be rehabilitated, so that he can exercise his common law powers with the right to summarize and comment upon the evidence as in the Federal Courts. He should not, however, in my judgment, have the right to express his opinion upon the weight of the evidence.

Ninth: The same number of challenges should be allowed to the state as to the accused, and both sides should be placed, as far as possible, upon the same footing, without undue hardship to the accused.

Tenth: The state should be allowed an appeal to a certain extent upon questions of law. The verdict of the jury, however, should stand, and I do not believe in the right of appeal on the part of the state in such a way as to affect the acquittal or conviction of the particular defendant, and I do not believe the "twice in jeopardy" principle under our constitution will, or should, ever be changed.

The expense, notoriety and worry incident to a properly conducted, single trial for a criminal offence, is all any person accused of crime should have to face, and if technicalities are eliminated, and the state has a fair opportunity to convict it should be limited to the single trial without appeal. It has been advocated that neither the state nor the defense should be allowed appeal, and we have been pointed to England as an example of the beneficial results of such a system. However, the English Criminal Appeal Act of 1907 provided for an appeal on the part of the defense, and it is shown that their previous system often led to great injustice. George Gordon Battle, Esq'r. of the New York Bar, in an address recently commented upon in the Journal of Criminal Law and Criminology (II, 3, 334 ff), speaking of "The Administration of the Criminal Law in England and in the United States of America," says:

"With all its crudities and defects, I think it is very seldom that an innocent man is convicted under our administration of the criminal law. I am, however, irresistibly led to the conviction that many innocent men must have been convicted under the English system."

Mr. Battle attributes this result to the fact that judges hearing

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criminal cases continuously come to have a bias against the defendant, and where the judge charged controls the procedure as under the English procedure, that bias is more or less entirely reflected in the verdict of the jury.

Upon this question I took occasion to say in my Annual Address as President of the American Institute of Criminal Law and Criminology, last year, that

"There are, of course, two sides to the question, but in our zeal to achieve the efficiency of the English system we must not overlook the fact that there is much to be said on the other side, and that the prejudice of our bar, very general throughout the country, against the undue influence of the judge over the deliberations of the jury, in the light of the experience of our bar is not altogether unjustified on their part in view of the facts."

Eleventh: The accused should be subject to cross-examination when he takes the stand in his own behalf and should be taken to have waived his constitutional privilege against self-incrimination.

Twelfth: The principle of second jeopardy should not apply in case of mistrial or retrial.

Thirteenth: An indictment should be sufficient if it specifies the crime, its time and location with sufficient particularity to prevent a second prosecution. *Res adjudicata* should be, after all, the only test to which a plea should be subjected and if it is sufficient to raise that plea it should be sufficient for all purposes. This principle applies to criminal as well as civil procedure.

Fourteenth: Press comment should be stringently limited to actual report of the proceedings, without comment, editorial or otherwise, and without comment from the state's or district attorney. We have grown all too accustomed to a statement in the daily paper as to what the prosecuting attorney expects to prove in a particular case. A statement which all too plainly shows that the information could have been secured only from the office of the prosecuting attorney himself.

Fifteenth: Jurors should not be disqualified because of the reading of accounts or hearing of rumors regarding alleged crimes, but only when they cannot give a fair verdict because of fixed opinion. We have a statute in Illinois on this subject which provides as follows:

"It shall not be a cause of challenge that a juror has read in the newspapers an account of the commission of the crime with which the prisoner is charged, if such juror shall state, on oath, that he believes he can render an impartial verdict, according to the law and the evi-

dence. And provided, further, that in the trial of any criminal cause, the fact that a person called as a juror has formed an opinion or impression, based upon rumor or upon newspaper statement, about the truth of which he has expressed no opinion, shall not disqualify him to serve as a juror in such case. He shall state upon oath, however, that he believes he can fairly and impartially render a verdict therein, in accordance with the law and the evidence, and must satisfy the court of the truth of such statement." (Hurd Rev. Stat., Chap. 78, Sec. 14.)

Sixteenth: Expert testimony should be rigidly regulated, and if experts are not furnished by the state their qualifications should be passed upon, their fees limited, and contingent fees absolutely prohibited.

Seventeenth: The state should have the right, under proper restrictions, to compel accused persons to produce any paper or thing of importance in connection with the trial.

Eighteenth: Jury service should be compelled on the part of practically every citizen. To that end the time of such service should be so fixed as to give the least possible inconvenience to those called for such jury service. In our state we have endeavored to get a law passed giving the judge before whom a juror is called the right to excuse to a certain day at any time within six months. So far we have been unable to get such a law passed, though it has been introduced at three separate sessions of the legislature. It has the general support of the bench and the bar in Chicago, but where the jurors are better known, as in the country, the bar so far has refused to endorse the plan.

Nineteenth: A transcript of the evidence of a witness on a former trial, whom it is impossible to produce, should be competent evidence in a second trial.

These are all well considered reforms, many of which have already been tested in other jurisdictions; some of them are now laws in your own state. The enactment of all of them in any one jurisdiction would go far to meet the present demand for reform. In securing such reforms, however, a beginning would have to be made and if I were to pick or choose I should especially urge, among the measures which I have named, (1) the abolition of the unanimous verdict by providing for a three-quarters verdict in all except capital cases, and (2) the abolition of the principle of second jeopardy so far as it is applied to cases of mistrial or retrial.

The Responsibility of the Bar.—While the interest in these problems is community-wide, if a satisfactory solution is to be found for them, men who are peculiarly trained for the task must give it their at-

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tention. This means the bar, and upon them should be placed the responsibility for the remedies. No one should know better the present abuses. No one is in a better position to see what is needed or to frame the remedy and no one should be so eager to secure the proper solution as the lawyer of standing and repute. The knowledge of the conditions, together with the knowledge of the proper remedy, is practically his exclusive property; the responsibility is fairly his, therefore, and should not be shirked.

It has been reasonable to anticipate that in a great movement for criminal law reform the prosecuting attorneys of the country generally would be the most vitally interested. Such, however, has not seemed to be the case, and an attempt to get their co-operation in connection with certain movements has been most discouraging. The bench has responded. Those interested in the problem outside the bar have responded; many of the leading members of the bar have taken a keen interest in the whole subject, but so far, the average prosecuting attorney or criminal lawyer for the defense has shown but little interest in the problems, or desire for their solution.

This is all wrong, of course, and must be changed in some way. Unfortunately, in my own state, for instance, the practice of the criminal law has degenerated until it is conducted almost exclusively, so far as the defense is concerned, by men without professional or social standing, men who have either failed or have never been able to get into the general practice of law, either because of lack of professional skill or of personal character, each of which is essential to any great success.

In our state we elect the states attorney, and most of them are either young men just starting out, who have no vital interest in the problems connected with the administration of criminal law, or older men who regard it merely as a source of income. In England, where the members of the bar try cases for the Crown and then for the defense, and where they have no system of regular prosecuting attorneys as we have here, men of the best standing try on either side, which in itself solves many problems such as we meet here. In Connecticut the prosecuting attorneys are appointed by the judges, which has some advantages over our elective system, but I am not sufficiently familiar with the working of the plan there to express a decisive opinion on it one way or another.

In trying to interest members of the bar other than those connected in criminal practice, we are sometimes informed that the particular lawyer does not practice criminal law and so is not interested. Surely he has at least the interest of the general citizen in the subject, which in-

terest should be intensified by his professional knowledge and desire to increase the standing and repute of the administration and the practice of the law as a whole.

The Need of a Scientific Body to Formulate Reforms, to Secure Co-operation of Those Interested and to Promote Legislation.—The bar is, however, not the only professional body interested. Many other groups of men have given far more attention to the causes and conditions underlying our entire criminal problem than has the bar. But much of this work has been done without an understanding on the part of the lay scientists, and on the other hand the bar has neither been familiar with nor willing to accept suggestions made in connection with the administration of criminal law coming from other than legal sources.

The medical profession has given much attention and has contributed largely to the solution of some of the problems connected with this evil.

The present movement for the reform of the criminal law has advanced by leaps and bounds in the last two or three generations. The extent of this advance can be realized only when one compares the conditions in our prisons and the treatment of criminals existing at the beginning of the nineteenth century with those at the present time.

Sociology, too, with its wide survey of the facts of life, has culled and classified a great mass of evidence bearing upon these problems which has hardly been considered at all by our law makers. The whole movement concerned with improving the condition of the criminal which finds its center and its object in *the individualization of punishment*; which takes into consideration all the underlying causes of crime and administers the penalty with the view to the reclamation of the offender rather than as revenge for a wrong to society, is new to the present generation of lawyers.

When only the criminal act itself is considered, detached from the person committing it, the punishment should be uniform no matter by whom the offense is committed. When that is the view of crime the lawyer need only consult the statutes. A knowledge of the sciences concerned with criminal conditions becomes necessary only when crime is viewed in a subjective aspect and the contributing or palliating circumstances connected with the offender and the commission of the crime are taken into account.

The great slogan of the whole modern criminal law reform movement, particularly of that larger movement comprehended under the science of criminology, is *the individualization of punishment*, which

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considers the act committed as an offense against society, and protects society, yet, notwithstanding, with an eye always on the offender, his motives, his environment, his limitations, and his possibilities. It applies the remedy and applies it in such a way as to reclaim the individual for further usefulness in his community without sacrificing the real demands of society.

The bar has taken little or no interest in the movements that go to make up the modern criminological reform. Much of the criticism against the bar for its unprogressive attitude is justified, but the explanation is at hand. However much the philosophy underlying penal administration may have changed during the last century, such change is known only to the scientific student of the subject, and while it has affected the practices of the administration of the criminal law, it has to a very limited extent affected only the actual enactments concerning it with which in the first instance the bar is more largely, if not exclusively, concerned.

As long as crime is regarded as an objective fact, a definite violation of the rules of society, for which a definite penalty is prescribed, regardless of the individual, or of the environmental conditions which produce the individual, or the act in him, our courts are always exclusively concerned with this prescribed penalty, and the bar feels little or no need of an understanding of or acquaintance with the great underlying movements of the contributory sciences, such as psychology, sociology, penology and the like, which go to make up the whole of the science of criminology. Just so soon, however, as there is an awakening to the fact that much else is involved; that, after all, granted the necessary protection to society, the important factor is the individual, the bar awakes to the realization of the necessity of scientific study of, and a thorough knowledge concerning all the contributory factors to crime. Such an awakening has been going on for many years in Europe, but has only just begun in America. Unfortunately, too, the results of the European experimentation in this field were and are hardly known to our bar, because of the lack of adequate translations of the scientific treatises dealing with these subjects.

These facts made imperative the organization of a scientific body, which would include not merely the bar, but all those other bodies of men who have special knowledge of any of the problems connected with the administration of criminal justice. This need has been fully met by the organization of the American Institute of Criminal Law and Criminology.

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The American Institute of Criminal Law and Criminology.—The American Institute of Criminal Law and Criminology is an outgrowth of the National Conference on Criminal Law and Criminology held in Chicago in June, 1909. The conference was composed of nearly two hundred delegates, representing the various professions and occupations concerned directly or indirectly with the administration of criminal law, and the punishment of criminals. It included members of the bench and bar, professors of law in universities, alienists, criminologists, penologists, superintendents of penal and reformatory institutions, psychologists, police officers, probation officers, and many others with a like special interest in the problems to be discussed. Delegates attended from every section of the country. In short, it was a representative gathering of those either actually concerned with the application of criminal law, or who, as students, were interested in its problems. Entirely without precedent in the history of America, either in character or purpose, it represented the first instance of co-operative effort among those interested in a better system of criminal justice, and marked the beginning of a new era in the history of American criminal jurisprudence.

The conference afforded an excellent opportunity for the exchange of ideas among lay scientists and lawyers, and a sincere effort was made to reach a common understanding on certain points concerning which there had been a widespread divergence of opinion. Although, as I have said, the idea of such a gathering was a new one in America, it was an old one in Europe, where congresses of criminologists have frequently been held for the promotion of criminal science and the consideration of practical problems connected with the administration of criminal justice. In England, for instance, the value of co-operation among lawyers and scientists in promoting improvement in criminal law and in methods of criminal procedure, has long been recognized.

An elaborate program, covering almost every problem of criminal science, was prepared for the Chicago conference, mainly from the list of topics suggested by the delegates. Although it constituted a remarkable program of constructive effort looking toward judicial and penal reform. For the systemization and despatch of the work of the conference, the delegates were divided into three sections. To the first of these were referred all topics referring to the treatment (penal and remedial) of criminals; to the second, those relating to the organization, appointment and training of officials concerned with the administration of punitive justice; and to the third, those having to do with criminal

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law and procedure. To the conference as thus organized, one hundred and thirty-five topics were submitted for its consideration. They included such subjects as, the indeterminate sentence, rehabilitation, procedure of juvenile courts, treatment of accused persons under detention, indemnification for wrongful detention, the employment of prisoners, bureaus of identification, probation and parole, the insanity plea, public offenders, the selection and treatment of jurors, means of increasing the effectiveness of the jury system, the unnecessary multiplication of criminal laws, the examination of accused persons, the simplification of pleading, the need of efficient agencies for collecting and publishing criminal and judicial statistics, restrictions on the right of appeal, reversals for technical errors, the enlargement of the power of the judge, the organization of procedure of municipal courts, laboratories for the scientific study of criminals, the use of medical expert testimony, and many others, including the all inclusive topics, so far as the individual is concerned, of the individualization of punishment.

Realizing the impossibility of dealing adequately with such a variety of questions, the conference wisely decided to restrict itself to a small number of topics which were to be made the subjects of investigation by committees, and upon which reports were to be presented at future conferences.

A committee was appointed, also, to investigate and report on the methods of criminal procedure in Europe, and particularly in Great Britain, where the administration of justice is frequently asserted to be a model of efficiency and despatch. Dean John D. Lawson of the University of Missouri School of Law, and editor of the *American Law Review*, and Professor Edwin R. Keedy of Northwestern University Law School, as members of this committee spent several months in England on this mission, and embodied the results of their research in a report which attracted wide attention, and has already proven of value.

The conference adopted resolutions calling attention to the popular dissatisfaction with the results of our present methods of administering justice; declared that reliable and accurate information regarding the actual administration of the criminal law was necessary to efficient legislation and administration; that appeal to Congress should be made through the agency of the Census Bureau for the collection of full and accurate judicial statistics covering the entire country, and urged the enactment of legislation by the states, requiring prosecuting attorneys and magistrates to report to some officer full information regarding crime committed within their jurisdiction, and the punishment of offenders.

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The conference also clearly recognized that if America was to come abreast of the present thought in Europe on these questions, the students of the subject in this country must be familiar with the literature on the subject there, and recognizing the desirability, if not the absolute necessity of making readily accessible in English the more important treatises on criminology published in foreign languages, steps were taken looking toward the translation and publication of such treatises, to the end that the principles of criminal science would be more generally studied, and the criminal law improved.

Finally, impressed with the advantages of uniting the efforts of lawyers, criminologists, sociologists and all others interested in this cause of a better criminal law, the conference resolved to perfect a permanent national association, to be known as the American Institute of Criminal Law and Criminology, whose purpose should be "to further the scientific" study of crime, criminal law and procedure; to formulate and promote measures for solving the problems connected therewith, and to co-ordinate the effort of individuals and of organizations interested in the administration of certain and speedy justice."

This was done; officers were elected and committees appointed. There have now been held three annual conferences, the last at Boston in connection with the annual meeting of the American Bar Association, which, at its thirty-second annual meeting voted to recognize the American Institute of Criminal Law and Criminology as an affiliated organization, carrying on the work of its particular field in connection with the American Bar Association, and made arrangements for the annual meeting of the American Institute and for the publication of the annual program with that of the American Bar Association, and for the publication of the proceedings of the American Institute conferences with the annual reports of the American Bar Association. Proceedings of the third annual conference of the American Institute appear in the annual volume of the American Bar Association, XXXVI. 1911.

The fourth annual meeting of the American Institute will be held at Milwaukee, Wisconsin, on August 29-31, 1912, immediately following the American Bar Association meeting.

The organization of the American Institute provided for the formation of state organizations to be known as State Societies of the American Institute of Criminal Law and Criminology. Such organizations are now in operation in Wisconsin, Minnesota, Massachusetts, New York, Pennsylvania and Illinois, while plans are being made for their organization in Missouri, Vermont, Michigan, and California.³

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The American Institute publishes the *Journal of Criminal Law and Criminology*, which is now entering upon its third volume, and which has received general recognition in this country and abroad. When it was established there was not throughout the length and breadth of this land, or, indeed, in any English speaking country, a journal devoted to the promotion of criminal science, though most other civilized nations already had such publications—three of them in South America—there being some thirty-five in all.

Such, briefly, has been the history of the American Institute and of the idea for which it stands. The need of it to any one who gives even the most hasty consideration to the subject must indeed be apparent. The vast number of problems suggested in connection with this whole subject of crime, the formulation and administration of the criminal law and the contributory sciences which may be properly included under the term of criminology, show to any observer the necessity for an organization composed of scientifically trained men with public spirit, who are capable and willing to devote themselves tirelessly to a consideration of the problems involved. Such an organization is the American Institute. It formulates for discussion the various problems, as no isolated group of men can do. It puts them before the country, thoughtfully, scientifically, forcefully, and attracts to them the attention of the courts and the bar. It brings together groups of scientific men, students whose conclusions will receive respect, both from the bench and from the bar, to both of which the country as a whole must look for guidance in these matters, if progress is to be made.

The method of work pursued by our committees make sure that whatever is undertaken by the Institute will be considered from every point; that the results will be worth publication, and the *Journal of Criminal Law and Criminology* makes the results of this work available to the general reading public, through its columns. Judges, lawyers, penologists, alienists, sociologists, psychologists and social reformers, all before the organization of the Institute, considered each topic of interest in their particular field only from their own standpoint. The result was that conflicting ideas were announced by men of eminent standing, the public was confused and no progress was made. The massing of students in each of these fields of work in a single organization and having each of the problems considered by committees composed of representatives from several fields bring to bear upon a given topic the combined knowledge of all of them on the problem under consideration, and results in definite proposals, so that the public, recognizing what-

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ever evil is to be corrected, sees the remedy, and takes some step to bring about the needed reform.

The importance of the work of the American Institute and of the dissemination of the results of the researches and conferences carried on under its direction through the instrumentality of the Journal can not be overestimated. But all this would result in comparatively little unless in each state there is a body of men and of women, scientific in training, devoted to the cause, who will endeavor to have the results of our labors embodied in concrete legislation and in the administration of the courts of their own state and of their own penal institutions.

The highest function which either the American Institute or the Journal can perform is the stimulation of a body of highly trained and interested men and women, to form a state society such as I hope you will become and so in closing I wish, on behalf of the American Institute, to thank you for holding these meetings, and to bid you success in solving your present problems, not only for your own benefit, but with the larger view of helping to solve these problems for the country as a whole, to which you may well become an example in criminal, as well as in civil law reform.

You can accomplish much, of course, in the solution of your own problem, you can accomplish more as an ideal to be held before similar bodies in states where oftentimes the need is greater, and I know of no more effective way to do this than as a part of that greater movement which has brought together men from every state in the Union, and which today draws the attention and centers the effort in the line of criminal law reform as has never been done before, the American Institute of Criminal Law and Criminology.

³At the close of this meeting there was organized a Kansas State Society of Criminal Law and Criminology and voted to affiliate with the American Institute.

INDETERMINATE SENTENCE AND RELEASE ON PAROLE.

(REPORT OF COMMITTEE F OF THE INSTITUTE.¹)

EDWIN M. ABBOTT, Chairman.

The development of the system of indeterminate sentence and release on parole has been very rapid throughout the United States during the past few years. While several of the states have been operating parole for the release of exemplary prisoners who have shown desire and probability of returning to a law-abiding life, yet the indeterminate sentence has not been adopted nor has it become as well understood as is the parole system.

There has been considerable doubt expressed as to whether the indeterminate sentence as part of the parole system is logical or necessary. The United States Government and twenty-eight states of the Union are now paroling prisoners under their various laws, while in Missouri, Governor Hadley also has established a parole system which has been evolved from the constitution of his state. There is little doubt as to the beneficent results that have followed this humane method of affording the derelict a chance to reform, for a resume of the statistics will show that between eighty-five and ninety per cent of paroled prisoners have afterwards become law-abiding citizens and never again returned to a career of crime. Such results must necessarily give impetus to the general adoption of a system which not only rebounds to the benefit of the individual prisoner, but to the general citizenship of the state and nation.

There are so many conflicting methods embodied in the various indeterminate sentence and parole laws, that the time has arrived when

¹The committee is composed of the following named gentlemen:

Edwin M. Abbott, of the Philadelphia bar, member of the Pennsylvania legislature, and drafter of the Pennsylvania Indeterminate Sentence Act of 1911, chairman; Joseph P. Byers, Newark, N. J., general secretary of the American Prison Association; Albert H. Hall, of the Minneapolis bar, chairman of the American Prison Association Committee on Law Reform; Charles R. Henderson, Professor of Sociology in the University of Chicago; Edward Lindsey, of the Warren, Pa., bar; Robert Ralston, Judge of the Common Pleas Court No. 5, of Philadelphia county; Samuel W. Salus, of the Philadelphia bar, senator in the Pennsylvania legislature; Samuel G. Smith, St. Paul, clergyman, and author of treatises on Penology; Richard Sylvester, Washington, D. C., chief of police, president of the International Police Association; Henry Wolfer, warden of the state prison, Stillwater, Minn., member of the state board of parole.

a uniform law upon this subject has become most vital and necessary. In the appended Acts of Assembly, the differences in the mode of operation have been specifically set forth, and invite criticism and comparison.

By segregating the wheat from the chaff, a composite bill could be drawn which should be adopted by the states not now using the parole system, and should be considered also by the remaining states and such amendments made to existing statutes as to secure uniformity.

A glance at the many laws will show that an indeterminate sentence can be given (1) to prisoners sent to a penitentiary for every crime except murder, (2) to prisoners sent to a penitentiary for all crimes including murder, (3) to prisoners sent to a penitentiary for all crimes except certain enumerated felonies, (4) to prisoners sent to any penal institution, (5) to first offenders only, (6) to all persons over a certain age, which in the different states is 16, 18, 21 or 30 years, and (7) a restriction of the operation of this law to male prisoners or a provision for different ages for male and female prisoners.

What selection should be made from this list? Which would be most effective? Massachusetts, the pioneer in the movement, provides: "Any convict sentenced to state prison except for life or as a habitual criminal." Pennsylvania provides: "Any person sentenced to the penitentiary" and New York specifies: "All first offenders convicted of felonies other than murder of the first and second degree."

The general system of administering the penal laws has somewhat to do with many of the differences, as in many states the legislature cannot enact laws controlling county jails or workhouses. Which of these systems is best it is difficult to answer as each has been operating successfully. The habitual criminal must be controlled, and whether as such, he should be given an opportunity of again becoming a law-abiding citizen after many failures, is indeed an open question. But to all other classes of criminals, both male and female, this law could be extended, and an opportunity afforded for regeneration.

The provision for the maximum and minimum sentence, however, is one for the gravest consideration. In some states both are prescribed by law and must be imposed as set forth by statute. Again, the minimum and maximum penalties for crime are specified, but the minimum and maximum sentence in each case, is left to the discretion of the trial judge. In some states there is no minimum prescribed, and the duration of imprisonment is left to the parole board. In Pennsylvania, both minimum and maximum sentences are imposed by the trial judge in his discretion, the only limitation being that the maximum sentence

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shall not be more than prescribed by law. In New Mexico, the court fixes both minimum and maximum sentences. Again, in other states, the minimum sentence must be a certain proportion of the maximum sentence, or there is a limitation that a minimum sentence be not less than one year—as in Connecticut.

It is this phase of the law which has raised the question as to whether the indeterminate sentence is a beneficent feature of the parole system or not. To place the term of actual imprisonment subject to the will, caprice, judgment or whim of either a prison board or a parole board, is problematical. Then again, others object to the trial judge's regulating this feature of our criminal jurisprudence on the same ground. Would not a flat sentence with a liberal commutation, the commutation to be earned by good behavior of the prisoner, and this to be followed by strict parole during the balance of the term, meet the exigencies of this conflict? Of course, this question must arise more pertinently when we come to consider the different methods by which a prisoner secures his discharge upon parole, at the expiration of the minimum sentence, or at such other time when he may again be given the opportunity of going among his fellow citizens.

The organization of boards of parole covers such a wide range that this subject should receive most careful consideration. In Indiana, the parole board consists of the warden, the president of the board of directors, the chaplain and the physician. In Connecticut, the board of parole consists of the warden and the board of directors. In Michigan, it consists of the Governor and the Advisory Board. In Massachusetts, of three prison commissioners. In New Hampshire, the Governor and his council act. In Illinois, it is made up of three members of the board of pardons. In Colorado, the Governor has absolute authority. In Kentucky, the parole board is the board of penitentiary commissioners. In Iowa, the board of parole consists of three citizens—one of whom is a duly licensed attorney. In Pennsylvania, the board of prison inspectors of each penitentiary recommend to the board of pardons of the state, who, in turn, recommend to the Governor. In Minnesota, the board of parole consists of the president of the board of control, the warden of the state prison and a citizen appointed by the Governor. Under the United States system, the board consists of the superintendent of prisons of the department of justice, and the warden and physician of each United States penitentiary, all subject to the approval of the Attorney General. In New York, the superintendent of prisons and two appointees of the Governor constitute the board; while in California, a

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state board appointed by the Governor, including the wardens of the two state prisons control the situation, with power vested in the Governor to act, either with his board or independently. Thus we have a multiplicity of systems. In Maryland, a commission has been appointed to investigate the penal system and report to the next legislature. They are to consider the parole, probation and indeterminate sentence laws now in force. What can they glean from such a field as this? How should such a parole board be constituted and how can they work most efficiently?

The board of parole should undoubtedly be independent of the board of pardons. The Minnesota system has been the most forceful and successful. A separate body with a definite work and a single purpose should be created in every state to carry out the parole system. Such a board co-operating with the judiciary, the prosecuting attorneys and the officers of the courts, should be encouraged to a larger extent than indicated by any law now in force. Efficient service cannot be properly and fully maintained by a board of pardons which is in no wise in sympathy or in close touch with prisoners and prison methods. To present a petition to a dispassionate body of men who are oftentimes moved by untoward circumstances, either for or against a prisoner, does not work out the solution of the problem to the best advantage. A separate, independent board keeping in close touch with the trial of cases in court, with the home conditions of prisoners, with the conduct of prisoners under duress, and who will further take up the field work of assistance, sympathy and encouragement while convicts are on parole, must undoubtedly bring even greater success than has already been accomplished under any prevailing system.

Another wide variance in the many laws is the provision as to when a prisoner becomes eligible to parole. In some states a model prisoner is automatically entitled to parole upon the expiration of his minimum sentence; in other states no time is specified and it is entirely within the discretion of the parole board. There are many other systems falling between these lines. In some, the board of prison inspectors are given discretion to consider the application for parole prior to the expiration of the minimum sentence, and to grant the convict his parole at or about the expiration of the minimum, or they can postpone his release from time to time until he serves the entire maximum, if they so decide. Then again, onerous burdens are placed upon applicants. In some states they are compelled to secure sponsors who are freeholders and who will obligate themselves to supervise the conduct of the paroled prisoner. Until recently, California insisted upon a deposit of \$25.00

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to insure reimbursement for expenses that might arise should the convict violate his parole. North Dakota still requires a deposit of \$20.00. However, in most of the states, a system has been evolved by which within a reasonable time after the expiration of the minimum sentence the prisoner enters some useful employment upon his parole; a field officer keeps in constant touch with him, and in this way he is encouraged again to resume his standing in the community.

A wise provision has been made in several instances whereby one of the reasons filed in the application, is a statement from the convict as to why he should be paroled, and another requiring applicants to set forth the names of those who might maliciously interfere with his attempt to resume a law-abiding life. All of the states require the prisoner to be in the highest grade of deportment before he can be paroled. Is not that a sufficient qualification to give him the opportunity to go forth among men again? This should be particularly so in the case of a first offender provided, of course, that a competent parole officer keeps in touch with him at all times. Every state requires an agreement that a paroled prisoner shall remain in the custody of the authorities, and immediately upon violation of parole be treated as an escaped prisoner. If uniformity is secured among the states, and reciprocity established as to the return of escaped convicts or paroles, this would tend to obviate the necessity of all burdensome conditions which oftentimes prevent worthy prisoners from securing parole and returning to their proper sphere in the citizenship.

The conditions of parole contain many specifications—most of them necessary—none of them unwise. The object of parole being to restore manhood, no burden could be too great that restricts one of the state's wards from returning again to the environment which caused his downfall. To make men look upward and again see the sunlight, and to look their fellowmen in the face with a steady eye sometimes requires extreme precaution. Therefore, restrictions as to the use of intoxicating liquor, associating with evil companions, gambling, the use of drugs and the visiting of improper places of amusement, cannot be criticized; while the requirements of steady employment, of regular reports, and a general observation of the laws, is vital. In Kansas, there is a provision that the paroled prisoner attend church at least once each Sunday, and that he live with and support his wife or mother. In Minnesota, he cannot marry while on parole without the consent of the board. In New York, he must make restitution or reparation for losses caused by his offense, and shall support his wife and children. In Pennsylvania, he must leave a specimen of his handwriting with the board, and

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furnish them with the names and addresses of all immediate relatives, and the names of all persons who might maliciously interfere with his attempt to live a law-abiding life. In Texas, his monthly report must set forth the money he has earned, expended and saved, verified by his employer. No one can object to any of these conditions which all affect the morale of the future law-abiding citizen.

What constitutes a violation of parole also is greatly divergent. In most states, this is left usually to the judgment of the board of parole, or the field officer looking after the paroled prisoners. Any breach of the parole agreement constitutes a violation of parole, and the fact that in many instances the breach of these conditions is brought to the attention of the board or of the field officer by some citizen, makes necessary the statement by the prisoner in his application for parole, as to what persons might maliciously interfere with his return to law-abiding life. Instances have been brought to the attention of a humane field officer where some enemy of the prisoner has attempted to have his parole revoked, but the honest endeavor of the official has thwarted this malicious interference. Therefore, it is well, sometimes, to be on guard and to know the quarter from which such an attack might come, and the parole officer being forewarned, will doubly scrutinize any report that might be made by anyone whom the prisoner has already stated would interfere with his attempt to reform.

With the question of violation of parole arises the consideration of how often a prisoner should be paroled, and whether every violation of the parole should bring revocation. This depends greatly upon the judgment and discretion not only of the field officer, but of the entire board of parole. Many a prisoner could be saved even after a breach, if properly handled. If this were not so, the whole parole system must fall. It is to correct, to reinvigorate and to reform that we give the prisoner the opportunity. Had he not been frail, he would not have fallen in the first instance, and we must forgive infractions of the parole agreement unless they are vital. So again, a separate board of parole in touch with the field officer and the general work becomes more efficient in dispensing justice and discharging its duty than any other body that could be suggested.

The question as to who may arrest for violation of parole, and the conditions that should accompany the arrest, is very well covered in nearly all of the Acts; in some instances a reward accompanies the capture of a violator of parole. This should not be necessary, as it must make a parolee feel as if a price were continually upon his head, and

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must give opportunity for dishonesty. A proper warrant issued by the proper authority as in all cases of arrest, should be sufficient, as considered by most of the states.

The penalty for violation of parole in all instances is a recommitment for the balance of the maximum term except that in some states an opportunity may again be afforded for re-parole. If the parole law is to subserve the best interests of all, the system of re-parole should be extended subject to the discretion of the parole board. Of course, the commission of a new crime must necessarily terminate parole. But there are other breaches of parole, as failure to report regularly, or other minor conditions in which, if the convict were returned to prison to serve six months or a year and then given another opportunity of re-establishing himself, his salvation might be effected. Thus again, is emphasized the argument for a separate parole board in close touch with the situation.

When a prisoner upon parole has faithfully discharged the conditions of his temporary freedom, then arises the method by which he shall be discharged finally. Here again, is afforded an opportunity for comparison and criticism. In some states parole continues until the automatic discharge of the convict at the expiration of the maximum. In many of the states the board has control. In other states, the period of parole is shortened by operation of commutation laws which apply to prisoners upon parole, as well as to those in duress. In Indiana, power to discharge is conferred upon the board to use whenever they feel satisfied that the paroled prisoner will live orderly if freed from parole restrictions. In Illinois, the board may suggest discharge after faithful parole of 12 months. Iowa, also follows this system. In Kansas, 6 months' faithful parole is sufficient. Kentucky, follows the Illinois system. In New Mexico, the superintendent keeps in touch with the parole, and any time after six months of exemplary service, he may recommend to the board a final discharge. If the board considers this recommendation favorably, they certify accordingly to the trial judge for his approval. If this is secured, it is then transmitted to the Governor, whose action is final.

In this latter system, we find co-operation between a separate parole board and the court officials. The field officer keeps in touch with the convict, reports to his board the result of his observations and deductions, the board acts upon the recommendation of their official and submits the result of their labors to the trial judge who initiated the sentence which the parole board is supervising; and subsequently the

final disposition is placed in the hands of the chief executive of the commonwealth, who restores the convict to liberty. Surely, here is a system which should commend itself from among the many in operation, although but little criticism has been advanced against the others.

The great number of prisoners under parole in the various states, and the small number of violations that have occurred is most encouraging. From every part of the country come the reports as to general satisfaction. This means not particularly any system, but the general results. Where we find from 85 to 90 per cent of paroled prisoners making good, and returning to a sustaining position in the community, it must encourage all who are in touch with this progressive system and subject the scoffers to ridicule.

Many states require that the paroled prisoner shall remain within the boundaries of the commonwealth, while again, other states provide a general system of release with the consent of the board. An excellent provision is made in the Michigan agreement, whereby the parole must not return to the county wherein he was confined. This entirely segregates the prisoner from the prison environment, and gives him a fair opportunity to work out his own salvation without the chimera of prison walls continually before him.

Altogether, a general review of the subject must fill those interested with encouragement. Not only in this country but throughout the world the treatment of convicts as persons who are still worthy of reclamation is growing. The extension of the parole system to life-termers after serving a long term in prison, is another evidence of the trend of mind which the public is assuming. Of course, in many states, pardons have been procured for life-termers, but the growing substitution of a system of parole after 15 or 20 years in prison, or in some instances even less, with a close scrutiny upon the actions of the paroled convict, add a humanitarian zest in the expansion of the parole system. In Germany, in England, in Austria, in Norway, in Switzerland, in Finland and in other European nations has this system of parole been established and expanded.

Many of our states follow the same system; many others have not as yet considered this phase of the situation. In some of the states there are no crimes where life imprisonment is the penalty. In Pennsylvania the only crime with a mandatory life imprisonment, is a second offence of second degree murder; kidnaping might result in life imprisonment at the discretion of the court. The usual life-termer in Pennsylvania is one convicted of first degree murder, sentenced to be hanged, and afterwards commuted by the board of pardons.

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In the parole law of Pennsylvania, therefore, no provision has been made for life-termers; so in other states this feature has been overlooked.

The parole system continues to grow with mighty force. The results have justified the adoption of this system of mercy. Nearly every state, where it has not as yet been given a trial, has the matter under consideration.

An epitome of the law of each state now in effect is hereto appended.

APPENDIX.

The following epitome of the existing laws, both national and state, can be followed by comparing the questions below with the correspondingly numbered statements that follow:

Questions—1. Who may be committed under the indeterminate sentence.

2. Provisions for maximum and minimum term.

3. Parole board.

4. Duties of the parole board.

5. Regulation of petition or argument.

6. Prisoners eligible to parole.

7. Points considered in granting parole.

8. Conditions of parole.

9. What constitutes violation of parole.

10. System of arrest for violation of parole and fees attached thereto.

11. Penalty for violation of parole.

12. Conditions of final discharge of prisoners from parole.

13. How paroled prisoner is finally discharged.

14. Number of violations of parole.

15. Extent of parole system.

16. Number of prisoners now under parole.

17. Note. Miscellaneous remarks. Special provisions.

Answers.—*United States (National) (1910).*—1. No provision.—2. A definite term over one year.—3. Superintendent of Prisons of the department of Justice, the Warden and Physician of each United States Penitentiary. The Chief Clerk of each prison shall be Clerk of the Board.—4. Meet three times a year; consider applications and authorize arrest for violation.—5. Prisoner can petition, but Board can act without petition.—6. All prisoners serving a definite term or terms over one year, who have served one-third of the total.—7. Service of one-third of the total term; record showing observations of the rules of the penitentiary; a reasonable probability of becoming a law-abiding citizen, and that release is not incompatible with the welfare of society; subject to approval of Attorney General.—8. To report to an adviser who becomes sponsor; to reside within fixed limits; to report to board in writing each month, said report to be certified by sponsor; to abstain from intoxicating liquors and not to visit any saloons or places where liquors are sold; not to associate with persons of bad reputation; to work honorably and diligently and to answer all inquiries sent to him, and not to violate any other laws.—9. Breach of any of above requirements.—10. United States marshal or any federal officer; ex-

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penses allowed.—11. Must serve balance of term remaining at time when paroled.—12. Faithfully complying with parole until end of sentence.—13. Automatically at end of parole.—14. One.—15. The board of each penitentiary limits the district, either state or county which cannot be extended except by permission.—16. Two hundred thirty-four. (From November, 1910, to June 30th, 1911.)—17. The above system has also been extended to the reform schools for boys and girls in Washington. Where United States prisoners are in state institutions, the state laws or United States laws apply, subject to the approval of the Attorney General. Recommendation has also been made to extend the parole law to life prisoners, after they have served a long period of years, and also to abolish the Parole boards and to appoint one official for this work, who shall report to the Attorney General for approval before paroles become operative.

Arizona (1911).—1. Convicts over eighteen years of age, for any crime, except treason and first degree murder.—2. The maximum or minimum time now or hereafter prescribed by law for the crime.—3. Warden of the state prison, Governor, State Auditor, Attorney General and the physician of the prison. The Warden will be chairman and a parole clerk is appointed by the Governor.—4. Meet at call to consider the case of every prisoner whose minimum has expired, for parole or absolute discharge. Where paroled prisoners have reverted or are about to revert to criminal habits, any member of the board may issue a warrant for him. The parole clerk also revokes parole.—5. Verbal application of the prisoner is the only form. The warden reports on his record before and since incarceration.—6. Any person who has served the minimum, or any person serving a fixed term who has a clean record for the time served.—7. The report of the warden and record before and since incarceration.—8. Prisoner sends report to parole clerk monthly; must abstain from intoxicating liquors; refrain from disreputable associations and live and remain at liberty without violating the law.—9. Any violation of the above provisions.—10. Any officer of the prison; all officers authorized to serve criminal process. Any officer other than the prison officer receives the same fees as for execution of warrant for arrest at the place where prisoner was taken, and will receive the same fees for transportation to the prison as are paid for transportation of any convict from the place of arrest to prison. Any officer of the prison is paid expenses. If the prisoner has money on deposit in the prison, fees will be paid out of it.—11. Imprisonment for balance of maximum term unless again paroled.—12. At any time Board decides he is worthy of discharge.—13. Automatically at the expiration of the maximum sentence, if serving indeterminate sentence; or by expiration of his sentence, if a fixed sentence. Discharge prior thereto controlled absolutely by the board.—14. Four (between August 1st, 1911, and June 2nd, 1912).—15. State system.—16. Sixty-eight, of whom forty-seven are still reporting.—17. Parole act meets favor; indeterminate sentence not well understood. We suggest the indeterminate sentence with neither minimum nor maximum limits.

California (1893-1901).—1. No indeterminate sentence.—2. All flat sentences.—3. State Board appointed by the Governor; including wardens of the two state prisons; Governor can revoke parole.—4. Consider all applications, grant or refuse parole, enforce requirements of parole and revoke same.—5.

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All facts presented in writing; no attorney heard nor argument allowed.—6. Those showing clear record for six months and against whom there are no other charges pending. Life termers after seven years.—7. Antecedents, conduct as prisoner, length of time served; general character, habits and environment, if released.—8. To proceed directly to place of employment; if change of employment is necessary, consent of parole board to be first secured; report to the parole adviser monthly, report to be certified by employer. To live honorably, avoid evil association, obey the law, abstain from the use of liquor, opium, cocaine or drugs except upon prescription; under no circumstances to enter a saloon where liquors are sold or given away.—9. Failure to obey above conditions.—10. Peace officers; there is usually a reward of \$25.00.—11. Returned to prison and forfeit credits; serve balance of term.—12. At expiration of maximum parole preserved. May be discharged sooner by board.—13. The Governor.—14. Two hundred twenty-eight, until February, 1912.—15. State system.—16. Four hundred nineteen (February, 1912).—17. Parole system considered favorably.

Colorado (1899-1907).—1. Any person sentenced for prison offense other than life.—2. Minimum not to be less nor maximum more than prescribed by law for the crime committed.—3. Governor and four members appointed by him.—4. To parole prisoners under proper regulations.—5. Blank petitions furnished by warden after prisoner has served one year. Governor or member of the board may suggest earlier application.—6. At expiration of minimum.—7. General conduct before and since imprisonment.—8. To report monthly for one year, and thereafter once every three months until expiration of maximum, and to abide by such rules and regulations as the warden of the penitentiary and the Governor of the state may from time to time require.—9. Failure to observe above conditions, or leaving state without permission.—10. Warrant of the board of commissioners approved by the Governor. No fees.—11. Must serve maximum, time on parole not to be included.—12. Service of maximum in prison or on parole.—13. Automatically.—14. No number given.—15. State system, but prisoners may leave state after signing agreement to return as required by Governor, and upon signing bond with sureties for costs of return.—16. No answer given.—17. Parole law not so effective as it should be. Not sufficient parole officers. This curtails useful work in securing employment for paroled prisoners. The people desire the system extended.

Connecticut (1901-2).—1. All persons (excepting tramps) committed to prison or reformatory.—2. The maximum not greater than specified by law; the minimum not less than one year.—3. Board of directors, the superintendents and wardens in each case.—4. To control parole and find employment for paroled prisoners.—5. Prisoner appears in person; no argument by outside persons or attorneys.—6. Those having served minimum term of at least twelve months.—7. Prison record; likelihood of return to orderly life outside; employment.—8. Must go direct to place of employment; report monthly to warden; must not change employment without permission; must not frequent saloons.—9. Acting contrary to agreement or leading disorderly life.—10. Any public officer, constable or sheriff; usual fees for similar services.—11. Return to serve maximum term.—12. By expiration of maximum

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or unanimous vote of all members of board at any stated meeting.—13. By the board of parole.—14. Twenty-four.—15. State system.—16. One hundred twenty-two.—17. There has been great prejudice against the indeterminate sentence. Courts make the maximum and minimum sentence close together, limiting parole. Parole is gaining in favor.

Idaho (1907).—1. All convicts except for treason or murder of first degree.—2. Maximum shall not exceed the longest term fixed by law; the minimum shall not exceed one-half of the maximum fixed by statute, and no minimum to be less than six months and where the maximum may be for life or a number of years, the court shall fix maximum.—3. Prison board: The Governor, Secretary of State, Attorney General and warden of the penitentiary.—4. Consider the record of trial, investigate career of prisoner, disposition and all facts likely to show capability of again becoming a good citizen; to adopt rules to prevent criminals from returning to career and to help secure self-support and accomplish reformation; arrange for support upon release.—5. Not stated.—6. Prisoners of good behavior who have served minimum.—7. Discretion of the board.—8. To abide by requirements of the board, to be law-abiding and continue in employment.—9. Failure to observe above requirements.—10. Any officer named in warrant issued by warden and certified by clerk of the prison. No fees mentioned.—11. Re-arrest, and imprisonment for balance of term.—12. Faithful observation of parole.—13. Automatically at expiration of parole upon request of warden.—14. Five, April 12, 1912, (covering a period of five years).—15. State, (but not definitely set forth).—16. Forty, on April 12, 1912.—17. There is general satisfaction under this system.

Indiana (1897).—1. Any male person thirty or over, convicted, except of treason, first and second degree murder.—2. As provided by law.—3. Warden, three directors, chaplain and physician.—4. Meet when necessary and pass on applications for parole.—5. Only printed form allowed; no attorney can represent petitioner.—6. Prisoners having served minimum.—7. Life history, demeanor, education, work in prison, ability to live lawfully and keep employed.—8. Must continue in employment and report regularly.—9. Failure to abide by agreement or evidence of return into criminality.—10. Any peace officer with warden's or agent's warrant. Same fee as bringing man to prison.—11. Must serve maximum unless sooner released by board.—12. When board is satisfied he will live orderly if freed from parole restrictions.—13. Parole board.—14. Not given.—15. State system.—16. Not given.—17. Warden can appoint parole agent to secure employment and look after paroled men. The system gives satisfaction.

Illinois (1899).—1. Every male over twenty-one and every female over eighteen convicted of felony, except treason, murder, rape and kidnaping.—2. The maximum shall not exceed maximum provided by law; the minimum not less than one year, making allowance for good time, as provided by law.—3. The state board of pardons of three members appointed by Governor, with advice of the senate. Warden is advisory member.—4. Adopt necessary rules and secure employment for paroles; give audience to, and parole inmates.—5. Friends or attorneys of prisoners can make arguments.—6. Prisoner must serve at least eleven months unless old offender, when twenty-one months

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must be served.—7. History, parentage, education, conduct in prison, ability to live orderly outside.—8. Reputable employment and a home free from criminal influence; must report to the sheriff, who must investigate and forward report to Warden; abstinence from use of liquor.—9. Prisoners leaving the state, committing crime, associating with disreputable characters or visiting saloons.—10. Warden's warrant.—11. Forfeiture of parole and service for as much of balance of term as board thinks proper.—12. Where prisoner has served parole twelve months; board makes order for discharge, which when approved by the Governor is final.—13. Board of pardons with approval of the Governor.—14. About eighty a year.—15. State system.—16. About seven hundred a year.—17. Some dissatisfaction with present law; many feel that the jury or the trial judge should fix the term of imprisonment.

Iowa (1907).—1. Any person over sixteen, convicted of felony, excepting treason or murder.—2. Maximum not more than provided by law; no minimum set forth.—3. Three citizens appointed by the Governor with advice of the Senate.—4. Prepare rules, keep in communication with and assist men on parole.—5. No petition or argument allowed except upon request of the board.—6. Those having served eleven months except where maximum is two years or less; in such a case, six months.—7. Record and character before and after commitment; nature of the crime, future environment, personal impressions of applicant.—8. Must remain in the state, have permanent employment, report monthly, live honestly, avoid evil associations, not change residence without permission.—9. Breach of any requirement.—10. Any officer with order of board, certified by secretary; fees same as sheriff.—11. Must serve maximum, time upon parole not counted.—12. Twelve months' service of parole acceptably and if likely to be reliable and trustworthy in the future.—13. Governor upon recommendation of parole board.—14. Not given.—15. State system.—16. Not given.—17. System appears to be working satisfactorily, particularly as complete trial record is furnished board, by county attorney and court clerk.

Kansas (1903).—1. All convicts, except for murder or treason.—2. Minimum and maximum prescribed by law, subject to control of trial judge.—3. Three members of parole board. This board has charge of penitentiary and state reformatory. At the penitentiary, warden is secretary and member of board.—4. Hear and recommend for parole to the Governor from the penitentiary. The Governor's approval is not necessary (for parole) from the reformatory.—5. No petition or argument allowed.—6. All prisoners having served minimum with six months of clear prison record excepting those committed for murder in the first or second degree, or serving third term.—7. Prisoner's desire and ability to become a law-abiding citizen; record for industry and conduct while in prison.—8. Secure employment; report immediately; not change employment without permission; spend evenings at home; attend church at least once each Sunday; abstain from all intoxicating liquor; avoid evil associates and improper places of amusement; obey and respect the law; that he live with and support wife or mother.—9. Any violation of above rules.—10. Warden's warrant served by any officer. No fees.—11. Must serve balance of unexpired term.—12. May be discharged at any time after faithful parole of six months.—13. The Governor.—14. About sixty during 1911.—15. State system (although not specially set forth).—16. About four

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hundred.—17. General satisfaction, with a request for stronger equipment of parole board. As much thought, investigation and care should be used in determining a man's fitness to return to society as is applied in ascertaining his unfitness for society.

Kentucky (1910).—1. Convicts over 30, subject to prison term, or an habitual criminal or incorrigible at reformatory.—2. Provided by law.—3. Board of four penitentiary commissioners.—4. Parole in their discretion; direct arrest of violators.—5. Not set forth.—6. Those having served minimum and life prisoners having served five years. All must have obtained good behavior record for 9 months.—7. Not stated.—8. Employment for six months or sufficient sustaining income; report monthly, live orderly, obey laws and abstain from drink.—9. Breach of requirements or any other reason sufficient to the Board.—10. Any officer with warrant signed by chairman of Board; expense paid.—11. Re-imprisonment until further action of board.—12. Exemplary conduct on parole for twelve months.—13. Board of penitentiary commissioners.—14. Not given.—15. General; (need not remain in the state.)—16. Not given.—17. Generally satisfactory; a special agent of the state looks after employment and conduct of paroles, and assists them in every way possible; visits them frequently.

Massachusetts. (1884-86).—1. Any convict sentenced to state prison, except for life or as habitual criminal.—2. Minimum not less than 2½ years; maximum not more than prescribed by law; additional sentence begins at expiration of first minimum.—3. Five prison commissioners appointed by Governor with consent of council.—4. Consider applications for parole and general supervision over all parole matters.—5. No petition necessary.—6. Must parole at expiration of minimum if record has been perfect; otherwise, date is set by Commissioners.—7. Prison record.—8. Shall not lead idle or dissolute life, must abstain from bad company and intoxicating drinks; report when required; must not become a dependent upon charity.—9. Violation of any condition.—10. Any officer on warrant of Governor, prison commissioners or other duly authorized official.—11. Detention according to terms of original sentence; period of liberty not credited; may again be paroled.—12. At expiration of maximum.—13. Automatically, at expiration of maximum.—14. Six hundred and seventeen in 1911.—15. State system (although not definitely set forth.)—16. Eight hundred and fifty-three on July 29th, 1912.—17. The Governor and council are given power to issue parole to habitual criminals. This covers the remainder of term of sentence and may be upon such terms and conditions as they prescribe. The entire parole system is commended.

Michigan (1905).—1. All convicts except life.—2. Minimum not less than six months; maximum not more than provided by law; judge can recommend proper maximum.—3. Governor and advisory board of four; in some instances the Governor alone; warden makes recommendation.—4. Adopt rules and supervise entire parole system.—5. Personal application only once a year.—6. All convicts except third termers at expiration of minimum, whose period of parole must not exceed four years.—7. Record of the case, life in prison and character.—8. Must leave the county, have honorable employment with responsible person, and report monthly; must not visit saloons nor keep bad company.—9. Any reason satisfactory to warden or superintendent.—10.

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Any officer named in warden's warrant; no fees set forth.—11. Must serve maximum; time at liberty not counted.—12. Faithful observance of requirements until expiration of parole; this period is fixed at the time of parole.—13. Governor; advisory board; warden.—14. Not given.—15. State system, but paroled prisoners must not return to county wherein he was confined.—16. Not given.—17. Governor can act independently but usually relies upon his advisory board after recommendation from the warden. The system gives satisfaction.

Minnesota (1911).—1. All convicts except for treason or murder.—2. Maximum shall not exceed maximum provided by law; minimum not stated.—3. State board of parole; three members: president of the board of control, warden of the prison and a citizen appointed by the Governor.—4. To regulate and control entire parole system.—5. Not necessary, but not prohibited.—6. All prisoners, in board's discretion, except life prisoners, and life prisoners after service of thirty-five years, less commutation for good behavior.—7. Previous history; physical or mental condition; character; prison record.—8. Steady employment; refrain from crime; report regularly; avoid evil associations and the use of intoxicating liquors; must not marry while on parole without consent of board.—9. Violation of any of the conditions of parole.—10. Agents designated by the Board; under salary and receive traveling expenses.—11. Re-imprisonment and loss of grade.—12. Faithful observance of parole.—13. Governor, upon recommendation of the board.—14. About one out of five or six.—15. State system.—16. Sixty-two on April 17th, 1912, from the state prison.—17. Generally favorable; the indeterminate sentence is new, but the parole act has proven very satisfactory.

Missouri.—Under the Constitution of the State of Missouri, Article 5, Section 8, it is provided that:

"The Governor shall have power to grant reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment; upon such condition and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons."

Under this constitutional provision, Governor Hadley has established a parole system. On April 5th, 1912, about four hundred paroles had been issued. He had had occasion to revoke about twenty-five. The parole system has been extended to young and first offenders, and is entirely within the discretion of the Governor, assisted by the pardon attorney.

Montana (1907).—1. No such law.—2. No provision.—3. State Board of Prison Commissioners.—4. To consider and supervise all questions of parole.—5. No petitions or arguments allowed.—6. First offenders for felony having one-half of term, excepting service of twelve and one-half years where term was more than twenty-five years, and life prisoners having served twenty-five years, less commutation for good behavior.—7. Previous history and character; record in prison.—8. Report regularly; secure employment, and remain in State.—9. Any violation of above conditions.—10. Any officer with warrant of board of commissioners.—11. Loss of good time; punishment in the county jail, or return to complete unexpired term.—12. Faithful fulfillment of requirements.—13. The Governor, upon recommendation.—14. Not stated.

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—15. State system.—16. Not stated.—17. An important feature in securing parole, is recommendation by the warden for good conduct, service and diligence in performing work or labor directed by the prison board. This system is giving satisfaction.

Nebraska (1911).—1. All over 18 convicted of penitentiary offenses, excepting murder, treason, rape, kidnaping or having served two previous terms.—2. Provided by law.—3. State prison board appointed by the Governor; one member to be a practicing physician and one a practicing attorney.—4. To investigate the record of trial and the career of the prisoner before conviction; to call upon any person for information as to the capability of the prisoner to become a good citizen; to examine prison record; to make rules to grant parole and imprison for breach thereof; arrange for employment and secure suitable homes free from criminal influences.—5. The Secretary of the board presents applications and no petition or argument is allowed.—6. Those having served the minimum.—7. Prison record and ability to live law-abiding life.—8. To obey the law, follow honorable and useful employment and keep free from criminal influence.—9. Violation of conditions of parole, or commission of new crime.—10. Board order to Warden certified by secretary directed to any officer; no fees.—11. Service of unexpired maximum; if returned for new crime, second sentence follows termination of former.—12. Six months' faithful observance of parole requirements; secretary reports to board who issues certificate which is sent to the Governor.—13. Governor upon recommendation of board.—14. One, (up to April 6th, 1912).—15. General, (although not specified).—16. Fifty-two (on April 6th); of this number, thirty-four under present, and eighteen under old law.—17. The general public consider the system satisfactory. When prisoners are released they are provided with clothing, \$10.00 in money and transportation to place of employment.

New Hampshire (1909).—1. Any convict sentenced to state prison excepting for life, or as habitual criminal.—2. Provided by law for each offense.—3. Governor and council.—4. Have complete charge of parole.—5. Automatically, no petitions needed.—6. Automatically at expiration of minimum sentence if obedient to the rules; otherwise Governor and council determine.—7. Ability to live orderly and become good citizen.—8. Report monthly and oftener if requested; avoid bad company; obey the laws.—9. Any violation of above conditions.—10. Parole officer makes complaints before any justice of the peace, who issues warrant; no fees.—11. Serve maximum; time upon parole not considered.—12. Faithful observation until expiration of maximum.—13. The Governor.—14. Twenty-seven (on May 1st, 1912).—15. State system.—16. Sixty-one (May 1st, 1912).—17. General satisfaction with both the parole and indeterminate laws. The chaplain, who is the parole officer in this state, has supervision of parole matters.

New Jersey (1911).—1. All convicts sent to state prison except first degree murder.—2. Maximum as provided by law; minimum not less than one year, and not more than one-half of maximum; where death sentence has been commuted, minimum must be twenty-five years.—3. Board of pardons composed of six lay judges of the Court of Errors, the chancellor and Governor; under indeterminate sentence law, board of inspectors of the prison are also

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vested with parole power at expiration of minimum sentence, but inspectors can act only after approval by Governor.—4. To remit fines, parole, commute sentences and restore rights of citizenship.—5. No one except applicant is permitted to argue before the board; counsel may file petition.—6. Prisoners whose minimum term is about to expire.—7. Circumstances surrounding the case; prison record, previous history, prospects of employment, ability and desire to lead correct life, and maintain self by honest labor.—8. Avoid evil company, avoid all forms of liquor, live industriously, honestly, and report regularly; must not leave state without permission.—9. Any breach of above requirements.—10. Any duly authorized officer; expenses only.—11. Service of balance of term subject to future action by board.—12. Faithfully observing conditions of parole until maximum has expired; prisoners on parole can earn commutation and thus have maximum expire sooner.—13. Automatically at expiration of maximum, which can be advanced by living a law-abiding life.—14. Thirty-five (until January 1st, 1912).—15. State system, (but permission can be secured to leave state).—16. Thirteen hundred seventy (since inception of parole law in 1905); 104 during 1911.—17. The parole system is considered very successful, and is being extended under the indeterminate sentence law. Eleven prisoners also have been twice paroled successfully. It has been applicable also to prisoners serving flat sentences, the minimum being computed as one-half of a maximum which the court of pardons may determine.

New Mexico (1909).—1. All prisoners sentenced to the penitentiary.—2. Court fixes minimum and maximum.—3. Prison board composed of the board of penitentiary commissioners and superintendent of the penitentiary; the Governor must approve recommendations.—4. Investigate the record of the crime; previous history as to industry and character; to parole, rearrest, and generally to supervise prisoners.—5. No petition nor application allowed.—6. All prisoners having served minimum except those having served two previous terms in any penitentiary.—7. Prison record showing improvement or deterioration of character and probability of becoming a law-abiding citizen; personal history and complete prison record.—8. Total abstinence from alcoholic liquors; permanent employment; a proper and suitable home free from criminal influences.—9. Faithful observance of the requirements.—10. Warrant of the superintendent of the penitentiary to any authorized officer; fees same as ordinary criminal process.—11. Service of unexpired maximum; additional imprisonment and time on parole not counted.—12. Superintendent keeps in communication with all prisoners; when prisoner has served not fewer than six months of his parole acceptably, the superintendent reports to the board, which recommends final discharge; recommendation is sent to trial judge, who enters order which, upon approval of the Governor, constitutes complete discharge.—13. Superintendent reports to board to recommend to the trial judge, who certifies to the Governor, who finally discharges him.—14. Not given.—15. General.—16. Not given.—17. This system is regarded very favorably; all prisoners released upon parole are supplied with suitable clothing, \$5.00 in money, and transportation to place of employment.

New York (1889-1909).—1. All first offenders convicted of felonies other than murder of first or second degree.—2. In all cases where the law provides maximum of five years or less; the maximum to be as prescribed by law,

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the minimum to be not less than one year; where minimum is fixed by law, not less than such minimum and the maximum not more than the longest period fixed by law; for second degree murder a minimum of twenty years and the maximum of life.—3. Board of parole for state prisoners composed of three members, superintendent of prisons, and two appointees of the Governor with consent of the senate.—4. To regulate the system of credits to be earned by prisoners as a condition of release by parole; to investigate and recommend for and control prisoners on parole.—5. Prisoners apply in writing; no other form allowed.—6. All prisoners having served minimum.—7. Criminal character, conduct, record of demeanor, education and labor while in prison.—8. Indulge in no injurious, unlawful or vicious habits; shall avoid persons or places of disreputable or harmful character; report regularly; permit visit from probation officer at abode or elsewhere; answer all reasonable inquiries as to conduct or condition; work faithfully at suitable employment; remain or reside within a specified place or locality; abstain for a reasonable period from use of alcoholic beverages; make reparation or restitution for losses caused by offense; support wife or children.—9. Breach of any condition.—10. Warrant to any officer from agent or warden or any member of board; regulation fees as in other cases.—11. Service of unexpired maximum unless sooner released again on parole.—12. When the board considers fit convict will live and remain at liberty without violating the law; or upon action of Governor.—13. The board, if serving indeterminate sentence; the Governor upon recommendation of board if original sentence was determinate.—14. Seven hundred four, on January 1st, 1912.—15. State system (although permits have been granted to return to home state).—16. Total paroled October 1st, 1911, 3894; on that date there were at large in good standing, 665, and delinquent, 413.—17. Note. Over 83 per cent of the prisoners paroled in 1910 and over 81½ per cent in 1911, made good. There is also a system for paroling prisoners who have received flat sentences. The entire parole system is considered favorably.

North Dakota (1911).—1. Anyone convicted of felony.—2. Maximum prescribed by law; minimum determined by board.—3. Board of experts consisting of warden, prison physician, a prison chaplain and one other person designated by the board of control.—4. Meet monthly; pass on applications for parole and applications for release under indeterminate sentence.—5. Blanks furnished; no oral arguments allowed, but written argument may be submitted by attorneys or others.—6. Anyone having served minimum term; employment must be secured and employer recommended by judge of his County court; must deposit \$20.00, and employer must agree to retain 25 per cent of wages to deposit with warden until \$100.00 is on deposit; good record at penitentiary for six months.—7. Prison record; nature and character of crime committed; previous record and environment; information gained from personal interview with applicant; probable surroundings if paroled.—8. To refrain from crime, to lead an honorable life; to remain within the state; to proceed at once to place of employment; to remain there until granted permission to leave; to report regularly; to conduct himself honestly, avoid evil associations, obey the law, and abstain from the use of intoxicating liquors; to report immediately to sponsor and show parole and enter upon employment provided for him.—9. Anything within discretion of the board of experts.—10.

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Any officer; regulation fees, but not to exceed \$100.00.—11. Service of balance of maximum; time on parole excluded.—12. Expiration of the maximum.—13. Warden of the penitentiary.—14. No violations up until April 4th, 1912.—15. State system.—16. Thirty-five up to April 4th, 1912.—17. The law is considered very favorably in this state. Certain inmates cannot be paroled, namely, person convicted and sentenced for first or second degree murder, and a person finally convicted in any jurisdiction of felony other than that for which he is being punished. The Governor also must approve and endorse the recommendation for parole.

Ohio (1891).—1. Compulsory with all prisoners sent to state reformatory, and optional with prisoners sent to state penitentiary.—2. Optional with trial judge but minimum cannot be less than prescribed by law for offense committed, nor maximum greater than prescribed by law.—3. Board of administration composed of eight members: a president and two other lay members, a physician, a fiscal supervisor, a mechanical engineer, a secretary and a parole secretary.—4. Supervise the entire parole system.—5. Blanks are supplied by the chaplain and no other form of petition is allowed; no argument is allowed.—6. Those recommended by the warden and chaplain, who have served a minimum of not less than one year; whose conduct in prison has been of the first grade for six months prior to application; who has never been convicted of felony theretofore; and in cases of life prisoners, those who have served twenty-five years; an agreement, from a reliable property owner certified from the auditor of the county that he is a property owner, that he will give prisoner employment upon release.—7. Previous history; prison record; ability to become law-abiding citizen.—8. To report immediately to employer; to show certificate of parole and remain in employment during term of parole unless change is authorized by parole secretary; to report regularly; to remain within the state; to live honestly; avoid evil associations; to obey the law and abstain from the use of intoxicating liquors.—9. Anything that in the opinion of the board of administration or field officer is contrary to agreement.—10. Any authorized officer; no fees set forth.—11. Serve unexpired period of probation.—12. Upon certificate showing faithful compliance with parole agreement.—13. Board of administration and warden.—14. Fourteen per cent in 21 years.—15. State system.—16. Two thousand one hundred eighty.—17. General satisfaction is felt in Ohio with this system. The separate board of administration is a new feature of the law making the parole and pardon of prisoners entirely independent of each other.

Oklahoma.—1. No such law.—2. No provision.—3. The Governor.—4. As set forth in the constitution.—5. No provision.—6. At any time.—7. Any points that may be thought proper by the Governor.—8. The Governor has the right to impose any conditions in his discretion. Those usually imposed are that the prisoner abstain from use or handling of intoxicating liquors; refrain from gambling or conducting games of chance; find employment; avoid evil associates and improper places of amusement; obey the laws and conduct himself in all respects as an upright citizen; report as to whereabouts and occupation.—9. Any violation of the law or the conditions of parole.—10. Any sheriff or police officer of the state; no fees.—11. Service of unexpired balance of original sentence.—12. Service of entire sentence, unless discharged

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sooner by the Governor.—13. By the Governor, or automatically at expiration of sentence.—14. Forty-two, (on March 29, 1912).—15. State or general, as prescribed by the Governor.—16. About 150 (on March 29, 1912).—17. This system has given general satisfaction.

Pennsylvania (1909-11).—1. Any person sentenced to the penitentiary.—2. In the discretion of the trial judge, but maximum cannot be more than that prescribed by law.—3. Board of five prison inspectors for each penitentiary, who report to the board of pardons—consisting of Lieutenant Governor, Secretary of the Commonwealth, Attorney General and Secretary of internal affairs, three of whom must recommend to the Governor for final action.—4. To investigate, make rules and regulations, and send report to the Governor with favorable or unfavorable recommendation.—5. Petition is made by applicant but no argument is allowed.—6. Persons having served minimum and in good standing. Application can be filed any time within three months of the expiration of minimum term.—7. There must be no other indictments pending against applicant; the warden and chaplain must recommend parole; the applicant must have a sponsor who will report regularly; a complete statement from the prisoner concerning past record must be at hand; applicant shall give reasons why parole should be granted; applicant must be in honor class showing record in prison.—8. Must secure a sponsor; must live law-abiding life; must report regularly; must keep employment; must not leave state without permission; sponsor must report monthly as to the conduct of his charge and the number of days employed during the month; parole must leave specimen of handwriting with the board; must furnish board with names and addresses of all immediate relatives and the names of all persons who might maliciously interfere with the convict's attempt to live a law-abiding life.—9. Any breach of parole conditions.—10. Any officer; no fees specified.—11. Imprisonment for the balance of unexpired maximum (time on parole not to be considered) unless again released on parole, or pardoned.—12. Expiration of maximum or the board of inspectors may sooner recommend absolute pardon to the board of pardons, who recommend to the Governor.—13. Automatically at expiration of term, or upon pardon by the Governor.—14. Twenty-eight (from 6, 1909, until December 31, 1911).—15. State system, but permission may be obtained for employment outside state if home is maintained within state.—16. Nine hundred seventy-eight, (from July 6, 1909, to December 31, 1911).—17. The indeterminate sentence and parole system have met with the general approval of all humanitarians and persons who best know the criminal. A system of parole has been established applying also to inmates of county prisons, workhouses and reformatories. This system is entirely under the control of the trial judge, who can parole and re-parole in his discretion.

South Dakota (1911).—1. All first offenders over 16, subject to a penitentiary sentence, except for treason or murder, or convicts with abnormal tendencies.—2. Prescribed by law.—3. The board of charities and corrections, including one parole officer.—4. To regulate the parole of prisoners and co-operate with them while on parole.—5. Prisoner may petition; no argument.—6. Those having served minimum.—7. Character of applicant; standing during confinement and the party with whom he is paroled.—8. Absolute good behavior and attempt to reform.—9. Any attempt at wrong doing.—10. Any

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officer; no fees prescribed.—11. Returned to the prison to serve maximum.—12. Faithfully observing parole conditions until maximum has expired.—13. Order of warden and board of charities and corrections at expiration of parole.—14. Three (on April 3rd, 1912).—15. State system.—16. Twenty-five.—17. The general opinion is that the parole laws work for the good of the prisoner, and they are considered satisfactory.

Texas (1911).—1. No such law.—2. As prescribed by law.—3. Three prison commissioners, requiring the approval of the Governor.—4. To regulate the whole system of parole of prisoners.—5. No arguments allowed; a petition may be presented with the application.—6. Any prisoner with good conduct for twelve months, who has served the minimum term for the offense of which convicted.—7. Trustworthiness and suitable employment.—8. Must report promptly to employer; work and conduct himself properly at all times; make monthly reports of work, money earned, expended and saved, with verification by employer.—9. Any matter in the discretion of the commission.—10. Any officer, upon commission's warrant; reward of \$25.00 is paid.—11. Loses credit for all good time; is fined 25 cents a day for all good time lost, to be taken out of the per diem of 10 cents which is allowed under the law; must serve balance of maximum.—12. Automatically, at the expiration of time originally given in sentences, but commission has power to grant absolute discharge in deserving cases before the expiration thereof.—13. Automatically or by the commission.—14. Three, (since March 11, 1911).—15. State system.—16. Forty-nine.—17. The law is not generally understood, but has not been given sufficient time to secure the confidence of the people.

Virginia (1904).—1. No such law.—2. No provision.—3. Board of five penitentiary directors appointed by the Governor.—4. To parole prisoners in their discretion upon such terms and conditions as they may prescribe.—5. Blanks furnished; no argument required.—6. Prisoners who have served one-half of their sentence and have kept the prison rules for the two years next preceding the date of the expiration of one-half of term; if serving two or more sentences, then one-half of the aggregate; life-termers, upon third conviction for larceny, after 10 years; all other life-termers, after 15 years.—7. Prison record and capability to live law-abiding life in the future and to live with a sponsor who must be recommended by some official of the commonwealth.—8. To keep employment; report regularly; continue independent of public or private charity; conduct himself as an honest, sober, peaceable, industrious and law-abiding citizen.—9. Any breach of the above requirements.—10. Warrant of the board to the superintendent of the penitentiary who directs any authorized officer; no fees mentioned.—11. Serve out the unexpired term of his sentence; time on parole not to be credited.—12. Automatically, after service of maximum.—13. Automatically.—14. Not given.—15. State system.—16. Not given.—17. The sponsor makes a monthly report to the superintendent of the penitentiary as to the conduct and behavior of his ward. The sponsor must guarantee also to give the prisoner steady employment at a stipulated compensation set forth in the petition.

Wisconsin (1907).—1. No such law.—2. No such provision.—3. State board of control of five members.—4. Meet quarterly; consider applications for parole; all applicants are interviewed personally.—5. The board considers

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all literature submitted, but no verbal argument is allowed.—6. Prisoners in state prison who have served one-half of sentence, excepting life-termers, who cannot be considered until they have served thirty years, less commutation, which is sixteen years and three months. No convict previously convicted of felony is eligible.—7. Previous history; prison record; future prospects as to becoming law-abiding citizen.—8. Secure satisfactory employment; both applicant and parole guardian must report monthly. Must not use intoxicating liquors.—9. Fail to perform duties imposed; submit false reports or commit new offense.—10. Parole officer; no fee.—11. Must serve balance of unexpired sentence.—12. Automatically, at the expiration of sentence, less commutation for good behavior.—13. Warden of the state prison.—14. About twelve (since 1907).—15. State system.—16. Two hundred (on March 26, 1912).—17. This law has given great satisfaction; more than four hundred have been paroled since 1907, with very few violations. A parole officer is constantly traveling, looking after paroled convicts and making reports as to their present conditions.

Wyoming (1909).—1. All convicts sentenced to penitentiary otherwise than for life.—2. The maximum not longer than that fixed by law, and the minimum not less than that prescribed. Both can be regulated by the trial judge.—3. Pardon board composed of five members, who are elected; the Governor issues parole upon their recommendation.—4. Consider the question of parole and make recommendations to cover it.—5. Prisoner applies to the board through the warden of the penitentiary, upon blank applications; no other petition allowed nor argument permitted.—6. No parole will be granted to any prisoner who has returned from parole as a delinquent; who has served a previous term in any penitentiary; who has not served the minimum term fixed by law, or the minimum term fixed at the time of sentence by the trial judge; who has violated any of the rules of the penitentiary within six months prior to his application, or who has committed an assault with a deadly weapon upon any officer, employee or other convict in the state penitentiary.—7. Previous history; previous associations; prison record; ability to become a law-abiding citizen.—8. Secure employment; report regularly; remain in state unless granted permission to remove; abstain from use of intoxicating liquor; avoid evil associations; avoid improper places of amusement; live a law-abiding life.—9. Violation of any of the above, or any special conditions imposed.—10. Any officer specified in a warrant from the Governor; the fees as for ordinary criminal process.—11. Service of the balance of unexpired maximum.—12. Automatically at expiration of maximum, or sooner if commutation for good behavior reduces maximum.—13. Automatically.—14. Four, (since February, 1909).—15. State system (but permission may be secured to go elsewhere).—16. Forty-two, (between February 24th, 1909, and April 2nd, 1912).—17. This law is favorably regarded. Efforts which prisoners have made to live up to the requirements of parole, indicate that this law was a step in the right direction. The state board of charities and reform continually keep in touch with paroled prisoners and counsel and advise them.

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Mr. Abbott reported that he had sent a copy of this report to the Commissioner on Uniform Laws from the state of Pennsylvania, and that this matter had been referred to the general conference of com-

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missioners, who thought it of sufficient merit to take up the question of a uniform law upon the question of probation, parole and indeterminate sentence.

E. Stagg Whitin, New York: "I think Mr. Abbott's report is a model of what many of our reports ought to be in this association, a careful national study of the problems. He has contributed much to what we need to know and what those who are out in the country need to know also; and it is going to be a valuable document to be placed in the hands of boards of control and parole.

"There is only one phase that I wish he had included to make the full rounded subject.

"In comparing the powers of boards of control and boards of parole, for they are interchangeable in many cases, I find there are some states in which the Governor himself holds the power which in other states has been delegated to the board of control or the board of parole. I think if you had included the powers of Governors in that, even if we do call it pardon, you would have completed the study and given it still more scientific value.

"I have not found in my study any comprehensive statement of the power of pardon which is in some cases, especially in the South, being abused. The reform of movements in those places has got to take many suggestions. Some questions are going to arise, and among them the question why we should leave that power in the hands of the Governor. What we need is a clear, definite answer from a careful study of the subject; and I hope if this committee is to be continued that it might consider the addition of that subject."

Edwin H. Abbott: "My friend probably overlooked part of the report. It is stated that in Colorado the Governor has absolute authority; in Pennsylvania the matter must be referred back to the Governor, who is the only one who acts. In California, the Governor can act either with the board or independently of the board. Those are the only states. You will find in the appendix an index to all of the acts which show the states wherein the Governor can act. I have also referred to the fact that Gov. Hadley, of Missouri, has taken it upon himself to construe the parole law from their constitution."

E. Stagg Whitin: "To make clear my point, there are states which you have omitted from that list, because there was supposedly no law to cover the point. I spoke of Maryland as one. The Governor pardons in that state; and in a report made to the Governor a year ago, attention was called to the fact that he was pardoning prisoners from the House of Correction at the request of any citizen of reputation, no matter what the case might be, no investigation being made. It is just such points as that that I should like to have the report cover."

Edwin H. Abbott: "We were not a committee on pardon, but were appointed to consider only the question of indeterminate sentence and parole; and Maryland has no such law."

W. O. Hart, New Orleans: "The only objection I have to Mr. Abbott's report is that I did not get the benefit of it sooner.

"If I had had this in the hands of the Governor of my state before our last legislature adjourned, I believe he would have signed several penal reform bills which came before him, because no man, after reading that report could plead ignorance of the subject." The report was referred to the executive board.

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(REPORT OF COMMITTEE E OF THE INSTITUTE.¹)

WILLIAM N. GEMMILL, Chairman.

During the year, the committee has endeavored to collect certain data concerning the procedure in the criminal courts and courts of appeal of the several states. Blank forms containing certain queries were sent to the chief justices of all of the appellate and supreme courts in this country. The same forms were sent to many of the attorney generals and other prosecuting officers. Replies were received from every state. In some instances the queries were fully answered, in others certain questions remained unanswered. From these answers and from a further examination of the statutes of the several states, the committee has ascertained that a gradual change has taken place in the United States in the methods of prosecuting criminal cases.

I. At one time nearly every state in the Union, by statutory enactment, required that all criminal cases of the grade of felony should be prosecuted by indictment. Gradually many of the states have changed this method of prosecution, so that to-day criminal prosecutions are generally carried on in twenty-four of the forty-eight states by information rather than by indictment. These states are as follows: Indiana, Missouri, North Dakota, Colorado, Florida, Vermont, Arizona, Idaho, Kansas, Connecticut, Oklahoma, South Dakota, Washington, California, Wisconsin, Michigan, Utah, Nebraska, Nevada, Louisiana, Wyoming, New Jersey, Minnesota, Montana.

This list includes the states named in the report of 1910 by Committee "E" with the exception of Oregon, which in that report was

¹The committee is composed of the following named gentlemen: William N. Gemmill, Municipal court, Chicago, chairman; A. C. Bachus, Municipal court, Milwaukee; James J. Barbour, former assistant state's attorney for Cook county, Chicago; Orrin N. Carter, chief justice, Supreme court of Illinois, Chicago; John J. Healy, former state's attorney for Cook county, Chicago; William E. Higgins, Professor of Law, University of Kansas; Francis E. Hinckley, attorney at law, Chicago; Jesse Holdom, former justice of Illinois Appellate court, Chicago; John D. Lawson, Dean of Law, University of Missouri; Alexander E. Matheson, attorney at law, Janesville, Wis.; Vroman Mason, former district attorney, Madison, Wis.; Edgar L. Master, attorney at law, Chicago; John S. Miller, attorney at law, Chicago; Harry Olson, chief justice, Municipal court, Chicago; James H. Wilkerson, U. S. district attorney, Chicago.

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classed with the states prosecuting by information. Since that time, however, the state of Oregon has turned back to its original method and to-day felonies can be tried there only upon indictment. To the list of 1910, however, must be added the states of New Jersey, Arizona and Nevada; New Jersey and Nevada having by recent legislative enactment changed their form of prosecution from indictment to information, and Arizona having been admitted to the Union since the report of 1910. In a few of the foregoing states it is still necessary that persons charged with crimes the punishment of which may be death must be tried upon indictment. This is the rule in Indiana, Connecticut and Louisiana. In several of the foregoing states felonies may be tried either upon indictment or upon information. Where both methods are allowed, from ninety to ninety-nine per cent of the criminal cases are prosecuted by information. In some states, such as North and South Dakota, Oklahoma and Michigan, a grand jury has not been called in many counties for from eight to ten years. In several states a constitutional amendment will be required before there can be a change in the method of prosecution from indictment to information. This is true in Arkansas, Maryland, New Mexico, West Virginia, New Hampshire, Kentucky, New York, Maine, South Carolina, Massachusetts, Delaware, Rhode Island, Pennsylvania, Ohio, Texas and Tennessee. In a few of the state constitutions it is provided that either of the two methods may be adopted. Other constitutions, as in Illinois and Iowa, provide that the legislature may abolish the grand jury and provide for the trial of all criminal cases upon information. In nearly all of the states the rule yet prevails that no substantial amendment can be made to an indictment after it has been returned by the grand jury. Some states by legislative enactment have provided for minor amendments, and in the following states substantial amendments may be made: California, Mississippi, New Jersey, Oregon, New York, Wisconsin, Louisiana and Connecticut. The usual practice in states where both methods of presentment are permitted, is that when an indictment has been quashed, leave is given to the state's attorney to file an information, charging the same offense set up in the indictment, and the trial proceeds at once to conclusion upon the information. In this way no unreasonable delay is permitted and substantial justice results.

Grand juries to to-day, while retaining all the powers they formerly possessed as investigating bodies, do not as a matter of fact perform such function to any large degree. The responsibility of investigating an alleged crime rests upon the state's attorney or other prosecuting officer. He is charged with the duty of preparing the evidence for pre-

sentation to the grand jury and the grand jury usually hears only such evidence as the state's attorney presents, and usually indicts or discharges the accused upon the recommendation of the state's attorney. While in theory the indictment is prepared and drawn by the grand jury, in fact it is prepared wholly by the state's attorney. If a mistake is made it is the mistake of the state's attorney, and not the mistake of the grand jury; yet the ancient rule prevails that an error in an indictment cannot be cured by an amendment, because the indictment being the work of the grand jury, can be amended only by the act of that body. The prosecution therefore fails. There can be no doubt but that much more satisfactory results would be obtained by throwing the responsibility where it belongs, upon the state's attorney, and requiring him, after he has investigated the evidence against the accused, to prepare the charge in the form of an information, which may be amended, when such an amendment can be made in the interests of justice. Rare instances may occur, such as in cases of riot or wholesale corruption, where an investigation of the evidence can be made by a grand jury with greater success than would attend the work of the state's attorney. But these instances will be most infrequent.

This committee therefore endorses the recommendation of the committee of this association for the year 1910, and urges that such legislation be had in the several states as will secure the right of every state to prosecute those accused of crimes either upon information or indictment, and the committee urges that where the method of prosecution by indictment is retained, provision should be made in the law for substantial amendments to such indictments, wherever such amendments can be made in the interests of justice.

II. From the reports obtained from the several states, it is apparent that by far the largest number of reversals in criminal cases by courts of appeal has been due to erroneous instructions given to the jury by the trial court. An examination of the methods of instructing juries in the criminal courts of the several states has revealed the fact that where written instructions are given, reversals on account of erroneous instructions have been much more frequent. In the following states written instructions only are permitted in criminal cases: Illinois, Delaware, Colorado, Missouri, Texas, Washington, Nevada, Iowa, Idaho, Montana, Mississippi, Kansas, Wyoming, Florida, Oklahoma, Utah, New Mexico, West Virginia, Oregon, Nebraska, Kentucky, and Maryland.

Oral instructions in criminal cases are usually given in the following states: Vermont, South Dakota, New Hampshire, New York, Maine, South Carolina, Massachusetts, Georgia, Rhode Island, Louisi-

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ana, Pennsylvania, and Connecticut. Either oral or written instructions may be given in the following states: Maine, Wisconsin, Pennsylvania, Connecticut, Ohio, Michigan, Indiana, Arizona, North Carolina, Oklahoma, North Dakota, Arkansas, New Jersey, and Minnesota.

From inquiry it has been ascertained that wherever both methods of instructing juries may be used, it is the usual practice to instruct orally, although the presiding judge has the right to determine which method will be adopted. In England, the judges holding criminal court exercise greater power in charging juries than is permitted in any of the states in this country. There the judges not only instruct the jury orally as to the law, but are given wide latitude in charging the jury as to the weight of the evidence and the credibility of the witnesses. But few of the states in this country have granted such power to trial judges. In the following states the trial judge is permitted to comment upon the facts in criminal cases: New Jersey, Vermont, New Hampshire, New York, Maine, Rhode Island, Pennsylvania, Connecticut, Ohio, and Kansas. In the jurisdictions, however, where oral instructions are permitted and exceptions allowed to be taken at any time to any part of the charge after the jury has retired from the bar, reversals have been but little less frequent than where instructions are in writing.

One of the questions propounded to the chief justices of the several states was as follows: "Give as nearly as you can, the percentage of reversals by courts of appeal in criminal cases of your state for the last five years." A few of the presiding judges did not answer this question. Others answered the question by stating that they had no exact information upon the subject and could give only an estimate. The only states from which the figures given purport to be based upon an actual count of the criminal cases before the court during the last five years are as follows: Wisconsin, Michigan, Illinois, Iowa, California, New Hampshire, Georgia, Massachusetts, Kansas and South Dakota. The following are the figures given by the presiding judges of the several courts:

	Per cent.		Per cent.
Wisconsin	30	Arizona	15
Illinois	37.4	Washington	25
Iowa	26	North Carolina	30
Michigan	31	Idaho	2
Massachusetts	23	Georgia	16
New Hampshire	22	North Dakota	35
Kansas	20	Montana	30
South Dakota	30	Mississippi	15
California	20	Wyoming	12
South Carolina	25	Florida	30

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	Per cent.		Per cent.
Maine	1	Oklahoma	30
Delaware	0	Utah	45
Louisiana	10	Arkansas	25
Colorado	40	Maryland	20
Ohio	10	New Mexico	20
Missouri	40	Vermont	5
Texas	30	West Virginia	40
Tennessee	10	Oregon	22
Minnesota	20	Kentucky	10

The effort to ascertain the exact percentage of criminal cases reversed by the several courts has emphasized the pressing necessity for some system whereby actual statistics may be collected and preserved by the proper officers of the several states. But few states have made any effort whatever to collect reliable statistics. In Ohio, Illinois, Texas, Tennessee, North Carolina, Iowa and Wisconsin, some effort is now being made along this line, which is most encouragnig.

Comparisons have frequently been made of the work of the English and American courts. It is frequently asserted that owing to the greater freedom exercised by the judges in the trial of criminal cases in England, substantial and reversible errors seldom are made. This conclusion is not based upon the facts. The following table shows the work of the English Court of Criminal Appeals, which was established in England in 1907 and which heard its first case in May, 1908:

Number of appeals heard and decided from May 1908 to April 3rd,	
1912	676
Applications for appeal refused.....	180
Total before the court since its creation.....	856
The 676 appeals decided were disposed of as follows:	
Affirmed	330
Sentences quashed and defendants discharged.....	168
Sentences reduced	174
Sentences increased	4
Sentences quashed because of misdirection of jury.....	103
Sentences quashed because of insufficient or improper evidence.....	29
Sentences quashed because defendant was found not guilty.....	21
Percentage of judgments vacated based upon appeals heard.....	51%
Percentage of judgments vacated based upon appeals heard and applications refused	40%

The English Court of Criminal Appeals has no power to remand a criminal cause for a new trial. This is clearly a weakness in the present constitution of that court and the court has frequently expressed its regret at being unable to remand the defendant for a new trial where

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it was evident he was guilty. A serious effort is now being made to secure an amendment to the Court of Appeal's Act, granting to the court the power to remand a cause for new trial. There is no absolute right of appeal in criminal cases in England. When a conviction occurs, a defendant wishing to have a review of his cause must ask the trial court for an appeal; if this is refused he may then apply to the Court of Criminal Appeals, which may or may not grant the application. In more than fifty per cent of the one hundred and three cases wherein the reviewing court reversed the judgment of the trial court because of misdirection to the jury, the misdirection consisted of a misstatement of the evidence; this misstatement often consisted of a failure to place before the jury such evidence as was of advantage to the accused and of emphasizing the evidence against the accused.

Another question that was asked the chief justices of the several states was: "What was the most frequent cause of reversals in such cases?" Such answers as were given are as follows:

Kentucky: Error in instructions and in admitting evidence.

New York: Errors in instructions.

Texas: Errors in charge.

South Carolina: Errors of the trial judge who sometimes inadvertently expresses himself upon the facts.

Colorado: Erroneous instructions.

Connecticut: Erroneous instructions or improper evidence.

Wyoming: Errors in instructions and prosecutors in insisting on pressing doubtful questions.

Florida: Errors in charges to the jury.

New Mexico: Erroneous instructions.

Oregon: Erroneous instructions and error in the admission of evidence.

Nebraska: Errors in instructions.

Mississippi: Improper instructions.

Kansas: Errors in instructions and admission of evidence.

Minnesota: Improper instructions and insufficient evidence.

Arizona: Erroneous instructions and admission of evidence.

North Dakota: Improper and prejudicial instructions and the admission of incompetent evidence.

California: Erroneous instructions and admission of evidence.

Idaho: Improper instructions.

Missouri: Improper instructions.

North Carolina: Erroneous charge to the jury and improper instructions.

Nevada: Error in instructions and faulty indictments.

Georgia: Errors in instructions and admission or rejection of evidence.

Two hundred forty-one felonies heard, thirty-seven reversed.

Washington: Error in instructions.

West Virginia: Erroneous instructions.

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Iowa: In 199 appeals, 53 were reversed; 18 for erroneous instructions, 11 for insufficient evidence, 9 for erroneous admission or exclusion of evidence.

Illinois: The guilt of the defendant had not been clearly established; erroneous instructions and improper admission or rejection of evidence; conduct of the trial court or counsel.

Michigan: Over-zealousness of prosecuting attorney, being allowed to make statements that he ought not to make.

South Dakota: Incompetence of state's attorneys.

Vermont: The construction of some new statutes.

Maryland: Improper rulings on evidence.

Oklahoma: Unfairness in the ruling of the trial judge on material questions.

Wisconsin: Twenty-four out of 105 cases reversed; of this number 5 reversed on the merits; 6 for erroneous rulings on evidence, 13 for errors in instructions or refusal to instruct.

Louisiana: Improper arguments of district attorneys and erroneous rulings of trial courts.

New Hampshire: Erroneous construction of statutes under which proceedings are brought.

It can but be apparent that a system which permits the attorneys on either side to hand to the court an almost innumerable number of propositions, oftentimes so cleverly drawn that the error in them may not be easily detected, and require the judge in the short space of time allotted to him for that purpose, to mark as "given" or "refused" all of these propositions and to permit the defeated party to preserve an exception on account of any defect which he may afterwards detect, in an instruction given on behalf of his opponent or refused when offered by him, cannot but make the trial a contest of wits rather than an honest effort to reach a just verdict and judgment.

The committee is of the opinion that it would not be wise to give to trial courts the right to comment to the jury favorably or unfavorably upon the weight of the evidence or the credibility of witnesses; but recommends that such legislation be had as will give to the trial judge the right to charge juries orally and to limit exceptions to such charge to the specific objections made by counsel at the time of the charge, in the presence of the jury and before it has retired from the bar.

III. If punishment for crime is to operate as a deterrent, it must be summary. England denied the right of appeal in criminal cases until the creation of the Court of Criminal Appeal in 1907. Since the establishment of that court its efficiency has frequently been proven and its need demonstrated. The right, however, to appeal in any criminal case should be made to depend upon the case itself, and should be denied unless the party appealing can show to the court some good reason for the step taken. In most of our states there is no abridgment of the

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right to appeal in criminal cases. In some states, however, an appeal or writ of error can be prosecuted only after the court, to which the appeal is taken, or from which the writ of error springs, has found that there is probable cause that substantial error was committed in the trial court.

Section 3 of the English Criminal Appeal Act of 1907, is as follows:

"3. A person convicted on indictment may appeal under this Act to the Court of Criminal Appeal—

"1st: Against his conviction on any ground of appeal which involves a question of law alone; and

"2nd: With the leave of the Court of Criminal Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal; and

"3rd: With the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.

"4.—(1) The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable, or that it cannot be supported according to the evidence, or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice; and in any other case they shall dismiss the appeal; provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favor of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

"(2) Subject to the special provisions of this Act, the Court of Criminal Appeal shall, if they allow an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

"(3) On an appeal against sentence the Court of Criminal Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed; and in any other case they shall dismiss the appeal.

"5.—(1) If it appears to the Court of Criminal Appeal that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Court may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict on the count or part of the indictment on which the Court consider that the appellant has been properly convicted.

"(2) Where an appellant has been convicted of an offense and the jury could on the indictment have found him guilty of some other offense, and on the finding of the jury it appears to the Court of Criminal Appeal that the jury must have been satisfied of facts which proved him guilty of that other offense, the Court may, instead of allowing or dismissing the appeal, substitute for the

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verdict found by the jury a verdict of guilty of that other offense, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offense, not being a sentence of greater severity."

It is common practice in many of the states to-day, for one convicted of a crime to appeal at once and secure a supersedeas by giving a bond permitting him his liberty until the cause has been finally determined by the reviewing court. Oftentimes the most flagrant violators of the law are thus permitted to prey upon the community for from one to five years pending the final disposition of their causes in courts of appeal. The right to appeal should be limited to cases where the trial court has certified that the case involves doubtful and uncertain questions of law or fact which should be determined by the court of appeal, or where the court of appeal upon an application to appeal should find for any reason that the cause is one where an injustice may have resulted to the appellant.

The committee therefore recommends that such legislation be enacted in the several states as shall limit the right of appeal to such defendants as shall secure from the trial judge a certificate reciting that the cause is one which contains some doubtful or uncertain question of law or fact, or that for some other reason it is one which should be reviewed by the court of appeal. Failing to secure such certificate such defendant should then apply to the court of review for the right to appeal, and such court shall grant such appeal only when it shall be of the opinion that the case is one where an injustice has been done.

IV. Paragraph 3 of Section 4 of the English Criminal Appeals Act provides that when an appeal is heard, if the court thinks that a different sentence should have been passed, it may quash the sentence passed at the trial and pass such other sentence as may be warranted in law by the verdict whether more or less severe in substitution therefor. This is an exceedingly broad provision and gives to that court a power which has enabled it to do justice by passing different sentences from the ones passed at the trial in twenty-five per cent of the cases before the court. Under the common law, an appellate court had power only to affirm or reverse a cause. Nearly every state of the Union has modified the common law in this regard. In some states, appellate courts are given power to amend the judgments of the trial court in criminal cases by passing proper sentences where through mistake or inadvertence an improper sentence was passed. This is substantially the rule to-day in the following states: Michigan, Georgia, Mississippi, New York, Pennsylvania, Tennessee, Texas, Nebraska, Colorado and Alabama. None of the courts, however, in the above named states have the power

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to reduce or increase penalties imposed by the trial court when, in the judgment of the court, such action should be taken in the interest of justice. There is no good reason, however, why the broader powers granted in the English Criminal Appeal Act should not be exercised by the appellate courts of this country. Such a power wisely exercised would do so much to lessen the number of cases reversed by the courts of appeal.

The appellate courts of the following states have the right to reduce penalties whenever in the opinion of the court such a course may be followed in the interest of justice: Iowa, North Dakota, Arkansas and Nebraska. The plan has worked well in these states.

All criminal codes pronounce against the specific crimes enumerated in them. The penalties which these codes prescribe are directed against the crime committed and not against the individuals who commit the crimes. No law was ever enacted which could operate automatically and do justice, because no two men having committed the same offense and living under different surroundings, are equally guilty. To the consideration of every criminal case must be brought all the circumstances of the crime, including the environment of the accused, and to the accomplishment of this task may well be added the earnest and conscientious efforts of a court of review. A court of criminal appeals will always operate as a check upon ill-considered judgments of trial courts, and it should have the power not only to reverse such cases when such a course is demanded, but to set aside the erroneous judgments and enter proper judgments where this may be done in the interests of justice to all concerned. It often happens that persons are severely or lightly punished, depending upon the particular judge or particular jury before whom their cases are tried. An appellate court with power to rectify such inequalities of punishments would be a most potent instrument of justice and would bring about a proper standardization of penalties.

To this end the committee recommends that not only should courts of criminal appeal have the power to reduce or increase penalties without reversing causes, where in their judgment such a course is proper, but likewise have the power to set aside the judgment and sentence of the court and pass such other sentence as is warranted by the evidence, having due regard for the rights of all parties involved.

V. The presumption of innocence that obtains in criminal prosecutions is evidence introduced by the law in favor of the accused. This evidence may be overcome by facts admitted or proven upon the trial. The office of a presumption is not to overthrow admitted facts but to

supply the absence of facts. This function ceases the moment the facts are ascertained. A judgment of conviction by a competent court is a solemn determination of the facts overthrowing the presumption of innocence. From this time the only presumption that arises is one of guilt. Courts of appeal should set aside such a judgment only when from a full consideration of the cause, a reasonable doubt exists as to the guilt of the accused. The presumption of innocence permits the accused to stand mute before the trial court without having his motive questioned. When, however, he voluntarily seeks a court of review and there pleads his innocence as a reason why the judgment of conviction should be overthrown, he should be required to submit himself and his cause to such further inquiry as that court sees fit to make. New trials are frequently urged upon the ground of newly discovered evidence. This evidence is submitted to the court by means of affidavits, which usually have no probative force. Courts of review should not only have power to interrogate the accused touching his guilt or innocence but should also have the power to examine such other witnesses presented by the accused as the court may determine. The examination of the accused or his witnesses should rest in the discretion of the reviewing court. The English Court of Criminal Appeal has frequently granted the application of the accused to be heard in person and has more frequently interrogated witnesses offered in his behalf. In many of the cases before that court the judgment of conviction was set aside because of new evidence thus submitted; in many others the judgment of conviction was affirmed in cases where a doubt had arisen in the minds of the court as to the guilt of the accused. The right of the court to hear further evidence upon appeal in criminal cases has long been the established law of Maine and of North Carolina.

The committee therefore recommends that such legislation be enacted as will give to courts of review the power to examine the accused under oath and to hear the evidence of such other witnesses offered on behalf of appellant as the court may elect.

VI. No uniformity exists in the procedure of the several states in reference to the use of the writ of habeas corpus. This ancient writ had its origin at a time ante-dating the Magna Charta, when life and liberty were held in slight esteem by governments and courts. At no time, however, since its origin has its legitimate function been to secure a review of mere errors or irregularities, either as to substantive rights or as to the method of procedure in trial courts. Its sole legitimate purpose is to free the petitioner from an illegal restraint. The judgment of a court of competent jurisdiction, although erroneous, is binding upon

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all parties unless reversed and no court of concurrent jurisdiction can by means of the writ of habeas corpus look beyond the judgment for the purpose of re-examining the charge or the method of procedure upon which it is based. Errors and irregularities which do not render the proceedings void are not open to review by the writ of habeas corpus. The remedy in such case is by appeal, writ of error or exceptions. In most jurisdictions the right of the state to appeal from a judgment in a habeas corpus proceeding is denied. This has given rise to startling abuses in many states. Courts of concurrent jurisdiction frequently review each other through the medium of a writ of habeas corpus. This is done in flagrant disregard of the law. Most of the states have enacted statutes upon this subject. Some provide for a review by either party, either by appeal, writ of error or exceptions. In one or two states the court upon entering a judgment in a habeas corpus proceeding is required to certify questions of law presented by either side to the court of appeal. In the following states the right of appeal is granted by statute to both parties from a judgment in a habeas corpus proceeding: North Carolina, Tennessee, Georgia, New York, Massachusetts, Wisconsin, Connecticut, Minnesota, Nebraska, Alabama, Indiana, Vermont, Michigan and Texas. In other states the right to review upon the application of either party is limited to the consideration of certain questions affecting property rights.

The committee recommends the enactment of such legislation as will give to both sides, in a habeas corpus proceeding, the right to apply to an appellate court for a review of the judgment, either by appeal, writ of error, certiorari, exceptions, or by a certification of questions of law.

APPENDIX TO REPORT OF COMMITTEE E OF THE INSTITUTE; DISSENT.

WILLIAM E. HIGGINS, University of Kansas.

The writer concurs in all but recommendations two and four of the Report of the Committee, and submits the following in opposition to the two named:

I. Recommendation two is as follows:

"That such legislation be had as will give to trial judges the right to charge jurors orally and to limit exceptions to such charge to the specific objections made by counsel at the time of the charge, in the presence of the jury and before it has retired from the bar."

The recommendation is:

First: A license to the trial court to err with a minimum danger of being detected by counsel and reversed by the reviewing court;

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Second: An additional burden which the accused should not be compelled to bear;

Third: A premium upon the ingenuity of defendant's counsel to devise specific objections so as to influence the jury before it retires for deliberation.

The recommendation is divisible into three parts:

1. That the charge be oral;
2. That only the trial court prepare the instructions;
3. That exceptions be limited to such objections as are:
 - a. Made immediately following the charge and before the jury retires, and,
 - b. In the jury's presence.

First: Shall the charge be oral?

The writer does not believe that oral are better than written instructions, where the following rules are in force:

1. Error, to be reversible, must be prejudicial to the substantial rights of the accused;
2. Such errors must either affirmatively appear or the language of the instruction must be such that the reviewing court is unable to say that the jury was not misled;
(Note—Practically, in some courts, this amounts to the rule that the language must be of doubtful construction, one that may have erroneously affected the substantial rights of accused, or, it must have affirmatively appeared to have that effect).
3. The instructions must consist of specific applications of the law to the concrete, ultimate facts of the case, and not of mere abstract propositions of law;
4. The reviewing court must test each instruction in connection with the other instructions, regarding the charge as a whole.

On the other hand, the writer believes that written instructions serve the following useful purposes:

1. To compel the trial court to avoid loose and misleading language;
2. To secure greater effort upon the part of the trial court to prepare his instructions so as to cover the whole of the case in the interests of substantial justice;
3. To secure the aid of the criticism and suggestions of counsel, wherever the instructions are submitted to counsel before being given to the jury.

Juries often attach great weight to every word of the trial court in a criminal case; hence, looseness of expression should be avoided. In this day of court stenographers, it is no great burden for the court to dictate the language of his instructions prior to giving them to the jury.

Second: Shall the court alone prepare instructions?

With this the writer agrees, provided, such instructions are submitted to counsel for criticism and suggestion before they are given to the jury, and, provided further, that the court is required to instruct

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upon all the vital points of the case. The right of counsel to aid the court by the preparation and presentation of instructions involving defendant's theory of the case has often operated, either intentionally or unintentionally, as a "pitfall" for the court, either by artful language or by the multitude of the instructions. In spite of the rule established by reviewing courts that instructions must be limited in number to the requirements of each case, trial courts have been subjected to the burden of examining many instructions prepared by counsel, until it has become a custom with some courts to "refuse" all such instructions and cover their substance in instructions of the court's own devising. It may be well, therefore, in jurisdictions where such difficulty exists, to deprive counsel of the right to prepare and present instructions. But aid from counsel can be secured by granting the right to inspect the court's instructions and to make criticisms and suggestions. The problem of reform is *not how shall reversals be prevented by allowing the trial court more latitude to err with less danger of detection*, but, *how shall substantial justice be done without reversals which do not affect the determination of the guilt or innocence of the accused*. Counsel can often aid by criticism and suggestion, even though these be wrung unwillingly from counsel. For states in which it is the practice to offer numerous or artfully drawn instructions, the writer proposes the following:

The trial court alone shall prepare written instructions to cover every vital feature of the case, and, when requested, submit them to counsel for criticism, giving reasonable opportunity for that purpose. It shall not, however, be error for the trial court to refuse to follow such criticism or suggestions.

The Kansas code of Civil Procedure provides that in *civil* cases the court shall, upon request of counsel, give reasonable opportunity to inspect the instructions, and this provision might well be made the rule in criminal cases, with the added provision that the court shall prepare all of the instructions.

It is not clear from the committee's recommendation whether reversible error shall be limited to errors of commission in the instructions given and whether the recommendation does not include errors of omission—failures to cover some vital part of the case. To allow him to instruct upon such parts only as he pleases would encourage carelessness and lack of effort in the trial court.

Third: Shall exceptions be limited to such objections as are:

- a. Made immediately following the charge and before the jury retires; and,
- b. in the jury's presence.

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The above has the following objectionable features:

1. It does not give sufficient time for the formulation of specific objections sufficient to constitute the basis of an exception;
2. It will, as a matter of practice, require counsel to make numerous objections, not in the *hope* of securing a reversal, but as an absolute *safeguard* to preserve defendant's rights;
3. It will subject counsel to the danger of unreasonable prejudice of jurors because of the very number of objections, which he may be compelled to make; and,
4. It will place before the jury conflicting views of the law and the facts, thus tending to deprive the trial court of his present power to declare the law of the case, and it will, practically, make the jury the judge between the conflicting views of the court and of counsel.

The provision will not give sufficient time for the formulation of specific objections, for the reason that counsel's impressions of the court's language cannot be made the basis of an exception, since the reviewing court will require that specific objection be made to specific language, and sufficient time is not given for this purpose by this provision. The instruction of a jury should not be a baseball game, in which the court "bats" his ideas to the jury under a rule that errors must be "caught on the fly" or that he will be thrown out at the "home plate" of the reviewing court by an error fielded without an instant's hesitation.

The recommendation will require numerous oral objections in order to safeguard the rights of accused, and at the same time, defendant will be subjected to the prejudice which juries so often have to the numerosness of objections made by counsel.

The provision will place before the jury the instructions of the trial court and the specific objections of counsel in such a way that the jury will retire to the jury room in possession of conflicting views of the court and of the counsel, and some jurors will undoubtedly question the court's instructions in view of counsel's specific objections. No better opportunity could be devised whereby adroit counsel might take advantage of the well known fondness of a certain class of jurors to take the law into their own hands in spite of the juror's oath to follow the law as given by the court. Especially will this be true in cases involving sympathy on account of matters not strictly in evidence but apparent to the eyes and ears of those who sit in the court room. The jury room should not be the forum of the contending views of the court and of counsel, but it is to be feared that this provision will make it such.

Finally, the object of reform is to do justice, and not to minimize the danger of reversing trial courts because of substantial error. Neither is it the object of reform to shift a burden unless the shift results in substantial justice.

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Recommendation four is as follows:

"Not only should courts of criminal appeal have the power to reduce or increase penalties without reversing causes, where in their judgment such a course is proper, but likewise have the power to set aside the judgment and sentence of the court and pass such other sentence as is warranted by the evidence, having due regard for the rights of all parties involved."

I do not concur in this recommendation upon the supposition that, as worded, it seeks to give to reviewing courts the power to find ultimate facts of the case. To give any such court any such power, without having the witnesses before it, is to ignore entirely the unspoken, unwritten facts, which so often affect the credibility of witnesses, but which are apparent upon the stand. Reviewing courts might well be given the power to give judgment where there is an absence of any evidence to sustain an ultimate fact showing an element of an offense, as, for example premeditation, in murder in the first degree, and be allowed to give judgment upon all the other ultimate facts showing other elements of an offense included within the verdict of the jury, as, for example, murder in the second degree, where the jury has returned a verdict of guilty of murder in the first degree. Under the language of the recommendation, however, the reviewing court might weigh the evidence and find an ultimate fact not included within the verdict of the jury. With this I cannot agree.

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The report was then opened for discussion. Judge Gemmill, the chairman, said:

"The report is printed and approved by all the members of the committee excepting three, and partially approved by them. The committee did not attempt to cover the whole field of criminal procedure. It was the consensus of opinion that we ought to confine our recommendations to a very few subjects, and we therefore took up first what seemed to be the most important, and that was the recommendation of a similar committee of this association two years ago, recommending the change of method of presentation from indictment to information. We made a thorough investigation to see whether or not any such changes were going on in this country. Twenty-four states now prosecute nearly all criminal cases by information rather than by indictment. Oregon, since the last report, has changed from information to indictment.

"The second topic that we took up is the method of instructing juries. You probably cannot find two lawyers who will agree upon the method. Yet we were able in this report to secure the endorsement of the recommendation here, that oral instructions be given to juries, instructing only upon the law, and that exceptions be allowed only when taken in the presence of the jury. * * * Professor Higgins has filed a minority report touching this question of instructions.

"I prepared a list of questions which I forwarded to the chief justices of all the Supreme Courts in the United States and to many district and prose-

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cuting attorneys, and one of those questions was aimed at the most frequent cause of reversals in their criminal cases. The answers are published in the report. In nearly every state the cry was that the cause of reversal was erroneous instruction. * * *

"One of the requests I made of the chief justices of the several courts was to give me, if possible, the percentage of reversals in criminal cases in their several states. This question was generally answered. Some of them, like Chief Justice Winslow in your own state, and Chief Justice Carter, based their answers upon exact information. This is true also of Indiana. In many cases, however, the justices said that they had no exact data upon which to make that answer, and their answer was merely an estimate. I wish especially to call your attention to the table in the report showing the percentage of reversals in criminal cases." * * * (See p. above.)

"It has been said in the last few years, through the public press and otherwise, that owing to the absence of a handicap upon the judges in England who try criminal cases, their decisions are seldom or never reversed.

"I examined the complete reports of the English Court of Criminal Appeals, which was established in 1907, and which went into operation May 1, 1908. Our report contains the results of that examination. The generally accepted notion that English courts try their cases with greater certainty than we do, and that their cases are seldom reversed is completely overthrown. As a matter of fact there is a larger percentage of reversals in criminal cases in England than in any state in the Union save Colorado." (See p. above). * * *

"I will not add anything to what I have already said, excepting this, that 103 of the total number of cases reversed by the court of criminal appeals in England were reversed because of misdirection of the jury, and in a very large percentage of those cases the misdirection consisted in a misstatement of the evidence by the trial judge, and the Appellate Court so holds and so states in its opinion.

"This committee believes—I think the committee, with the exception of Professor Higgins, was unanimous on that question—that it is unwise to give to trial judges in criminal cases, the right to comment upon the facts, or to comment upon the guilt or innocence of the accused. Certainly that has not worked out very satisfactorily in England, if this record is to be taken as a criterion. Judges should, however, have the right, and should be limited to the right, of commenting upon the law and doing that orally, and requiring exception to be taken before the jury has retired from the bar."

Professor Higgins: "My dissent is with reference to oral instructions. I concur in the report of the committee, if the committee means that the judge shall not be allowed to comment on the evidence. But I do maintain that an instruction to the jury should contain what we call the ultimate facts in connection with the propositions of law. If these gentlemen in their report have endorsed abstract propositions of law to be stated as instructions to the jury, I am against it; I think that is out of the question. I think that one of the causes of mistrials in this country is that judges in instructing juries, confine themselves to mere abstract propositions of law. And on the other hand, I believe it would be most unwise to allow a man to sit on the bench and instruct the jury as to what we call the evidentiary facts. That will be a large guide

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to the jury, who advisedly consider themselves very often as not competent to judge of the evidence, and they will follow the voice, mind and gesture of the judge with respect to it.

"What I do mean is that every proper instruction to a jury should consist of the abstract proposition of law applied concretely to the ultimate facts in the case on each proposition. I feel strongly on this point after an investigation covering a number of years.

"I believe that many judges and lawyers do not study scientific procedure so that they understand the proper function of a trial, and they mix evidence with operative facts in their pleadings and evidence with ultimate facts in their instructions, to the confusion of our procedure and the ultimate reversal of the case. That is the first proposition. I want to make myself clear. There are certainly in procedure conclusions of law, ultimate facts put in issue by the pleadings, and the evidentiary facts to sustain these ultimate facts. A scientific instruction and consideration of these matters by those men who sit in authority on the bench and those who practice at the bar, would tend very largely to simplify procedure.

"I am opposed to the second recommendation for the reasons set forth in the report which you can read; but I think that the report of the majority of the committee is merely favorable to this proposition: That no instruction should be permitted to reverse a case, for if you can remove the opportunity to catch the judge in what is admittedly an error in the case, you are simply allowing the court more latitude to err. And, as I stated, this is merely license to the trial court to err with the minimum chance of detection. Why not say, let him err as much as he pleases and the jury will correct the errors? I do not believe that in many jurisdictions the jury will correct the errors. In that case why have instructions at all? Why not carry the proposition to its legitimate conclusion? I do not understand Judge Gemmill to maintain that proposition at all, of course, but I maintain that if you allow this you might as well allow the rest of it and so let the court err as it pleases.

"But that is not my only objection to it. Before I proceed I want to say that the proposition is not to allow the court to err and not be caught, but how to avoid error and obtain the truth in the case. That is the object of reform.

"To allow counsel to trap the court, is vicious; it must be avoided. In those jurisdictions, therefore, where there is any practice on the part of the bar to offer numerous instructions, with one proposition of law applied to the facts under one form and then revamped under another, there obtains a well established practice of the court to refuse all instructions on the part of counsel and to make them himself. If that is persisted in I concur in the advisability of taking away from counsel the right to offer instructions to the court and predicated error for refusal. But I do believe that the bar of this country should be brought to this standard, viz.: that before the court instructs the jury the court should receive the criticism and advice of the attorneys at the bar in that case, and that opportunity should be given to counsel, therefore, to inspect the judge's instructions which he proposes to give on the ultimate facts of each proposition of law. After the court has received the criticism let him do as he pleases; if he wants to take it, well and good.

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"Now, the objection to that is, on the part of some, that it consumes time; that you must excuse the jury. But it is better to excuse the jury for a recess and avoid error in a case than to have it sent up and reversed or modified; better to have a final determination of the question by a deliberate attempt to get at the truth, than to labor wholly in the interests of finality and expedition at the risk of reversible error. Therefore, I see no merit in the contention that it will consume time. Under a wise guidance it will consume no more time than is perfectly proper.

"I think that corrections lie not so much in taking away from counsel the opportunity to inspect and to predicate error in three or four days, but in saying this: that no error in instructions shall cause a reversal, unless it is prejudicial to the substantial rights of the defendant and those other safeguards which are here enumerated. If these be thrown around, it seems to me that errors in instruction will be reduced to a minimum. But I want to return to the proposition that if a court errs substantially in a case, and he has given the ultimate facts in his instructions, so that the jury is sure to be bound by the charge, and ought to be bound by it, then that case ought to be reversed. We are not here in the interests of finality; reform is not merely disposing of cases with expedition; it is to be just; and therefore no court should be allowed to sit on the bench and misdirect a jury, and, in the slang phrase of the street, 'get away with it,' if it is fundamental and prejudicial. If we adopt the doctrine that all errors excepting certain ones specified, which do not affirmatively appear to have prejudiced the substantial rights of the defendant, shall be resolved against the defendant's appeal, I think that we shall very largely avoid the trouble.

"The doctrine of requiring an affirmative appearance of error on the part of the defendant in the record, of course, will not be acceded to by a large number of attorneys; whether it is wise or not is a question of debate. I am myself slowly coming to the conclusion that that doctrine is a wise one and that it will avoid a very large number of reversals.

"The reasons which you will find set forth in my dissenting report are apparent to those who are in practice—will bear weight with some and will not bear weight with others. I think I can produce a long list of those who are radically opposed to oral instructions.

"The second objection that I have to the point is this: I may misunderstand the recommendation, but if exceptions are to be taken to an oral charge, and those exceptions are to be taken in the presence of the jury, an adroit counsel can so shape his objections that his theory of the case will go before the jury; and I know from experience that in a good many trial jurisdictions that that jury composed of men who know both counsellors will say: 'Well, I tell you that I think in all common sense the contention of the counsel for the defendant in this case is a more reasonable contention as to the law than the contention of the judge; and I am going to follow it out here.' And you will have transferred from the court room a contention over the law of the case, in the jury room. I think that is the danger and that is my second objection.

"Let me say in passing, that the very valuable table of the causes of reversals secured by Judge Gemmill (and I want to say that Judge Gemmill

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has done a large amount of work in collecting the data) is not conclusive, because of this fact: In my own state 20 per cent of reversals are due to erroneous instructions and omission of evidence, as stated by Chief Justice Johnson. Our reversals are 20 per cent of the appeals; that 20 per cent of reversals is composed of nearly 8 per cent of reversals in favor of the state on exceptions taken by the state on what we call a question of reserve, not during the trial, but, for instance, where an information has been quashed.

"So that we will have to go further and find out how many reversals were reversals in favor of the state and not in favor of the accused, before we can say that that is a bad showing for these various states. I say that by way of explanation.

"One other thing in conclusion. I think, gentlemen, that an investigation of this kind is required and we absolutely need a simplified, uniform procedure all over the country; but we absolutely need one thing especially with reference to our attorneys, prosecuting and defending. There should be in every law school in this country a careful education in the fundamentals of practice. I plead that those who are interested in criminal law shall insist that the men who go to the bar for the plaintiff or for the defendant in criminal cases, shall, first, be men who understand the differentia of a conclusion of law, an ultimate fact made by the issues of the case, and the evidence to sustain it. The intermingling of those three things causes confusion and works reversals. The object of a trial is to get the truth. That is the ultimate fact in the case; and if we confuse it with opinions which we should endeavor to avoid, as an opinion is not an ultimate fact, error results. Let the evidence determine the ultimate fact. Clear distinction in this regard constitutes a knowledge of the fundamentals of procedure.

"Second, we want to insist that these men not only have scientific knowledge in that respect, but that their legal ethics shall be such that they will want to keep these things distinct and not intermingle them; and when we do that, it seems to me that together with an investigation such as a committee like this makes, we will have made a large step towards the solution of the determination of the guilt or innocence of the accused, irrespective of passion or prejudice."

Judge Russell, Oklahoma: "In my state we have the practice of information as well as indictment. We have no grand jury, excepting that which the judge sees proper, upon his own motion, to convene, or which may be called upon the application of 100 taxpayers. All crimes can be presented by information by the county attorney. We have no district attorney.

"Upon the subject of points applicable in instructions I have this to say: A man is presented upon a charge of murder. That involves several degrees of homicide. The court hears the evidence. * * * And when it is concluded the jury is placed in charge of the bailiff, and the court asks whether counsel on either side has suggestions to make in argument or propositions of law to submit. If they have, well and good; if not, the court retires and submits the law applicable to that case. If the offense of murder has not been developed by the evidence it is a waste of time and paper to submit the law of murder. If only the issue of murder has been presented by the evidence upon one side, and upon the other, self-defense to the accusation, submit those

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two propositions. If there is an intermediary current of manslaughter in a case stripped of deliberate homicide, you submit the law applicable to that as well. Now, there you have your three branches, murder, manslaughter, self-defense. Abstract principles of law should never be encouraged; it is confusing. Only the law applicable to the case raised by the testimony should be submitted. The law applicable to those facts should be submitted without any comment on the part of the judge as to the weight of any particular fact. * * *

"Now, as to instructions. In our state they may be written unless counsel consent to oral instructions. You have a jury of laymen, not of lawyers. The judge gives out orally, principles of law to be submitted; the rights in the case, and turns them over to counsel. Now, as Professor Higgins says, an astute lawyer goes up and inserts his objection in a dogmatic fashion; the jury has heard the oral instruction, but on that particular branch it has gone from their minds, and what that attorney calls their attention to, dominates. When they go to the jury room they have no written instructions; they have to trust to their memories; the last thing they have heard is something that sounds to them good. They go out, but of course if they forget what is said they can call for written instructions. But it won't do, in my judgment; time is always saved when you hear the suggestions from your brother members of the bar who are interested in the case. The court retires to his chambers, submits his instructions; carbon copies, if you please, are handed to the lawyers. Let them draw a cold-blooded bead upon it. If they draw it and you still maintain the position asserted in the instructions after deliberate review and reflection on what they have stated, it relieves the Supreme Court of a world of work. A little extra time may be required down below, but you have saved time in the long run. * * * By pursuing that practice of giving the attorneys the opportunity to make their suggestions. In five years I have had no criminal case reversed on instructions because of error. I never had a civil case reversed because of instructions. I give them time. * * *

"Of course in minor felonies where the issues are very simple, counsel say, 'we consent to oral instructions;' if the jury wants them drawn off they can have them before they return their verdict, if they do not understand them." * * *

Edwin M. Abbott, Philadelphia: "We have one system in the East with regard to the charge of the court which I think should be preserved. In our state and in many of the states of the East, all points submitted for charge by counsel, must be handed in to the trial judge before argument begins; and during all the course of the argument the trial judge has those points before him. Then his charge is given; and under the laws of the state of Pennsylvania, he is compelled to give a full, fair and equitable charge and a fair review of the evidence. Our courts compel the judge also to review all the evidence briefly; and then, if error is made, it is reversible error, if it has been prejudicial to the rights of the defendant. * * *

"Now, just as Judge Russell has said, the court gives the law applicable to each case. He has a tried scientific mind and is supposed to know what is the law in each particular case, and whether it is a case for the jury or not, and how much of law there is to consider upon the facts presented. We try cases upon evidence and only upon evidence, and the court charges the jury

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upon evidence, and then when the court goes wrong, we cannot say that there was no wrong caused by a wrongful charge on the law. Our judges must follow the law in their charges to the jury; and if the courts themselves have gone astray, a written charge placed upon the record is the only proper way by which it can be reviewed by the Appellate Court. I therefore am in favor of the continuation of the written charge, so that in case wrong has been done any defendant it may be cured by the Appellate Court."

Charles A. De Courcy, Boston, Mass.: "I wish to consider two very small matters, and I shall not attempt to discuss the general proposition.

"This table in the report giving the number of reversals, is so important and so likely to be quoted at large in these days when so much is said as to the errors of trial courts, that I can but regret that the committee did not secure the figures as well as the percentages. I cannot avoid thinking that to the popular mind this table is misleading and exaggerated. Having in mind my own state, the suggestion that 23 per cent of the criminal trials are reversed seems startling; but when you know that that means that not more than 17 criminal cases were tried in a year before the Appellate Court and not more than four reversed, why, the popular conception of the efficiency of the trial court would be very much different—four cases reversed rather than 23 per cent of the cases. These four cases need to be further explained. It does not mean that in all the four cases in which the finding of the trial court was reversed, the county and the parties are put to the expense and delay of a new trial, by any means. I should say one if not two of the four were reversed because the law upon which the case was tried, the statute or ordinance with the violation of which defendant was charged, is found by the Appellate Court to be unconstitutional. That is a question upon which the trial court would not presume to act, of course. So that when you reduce this down to concrete figures, the number of cases that are not only reversed but sent back for a new trial, as I had occasion to know from an investigation made last year for the American Prison Association, is a very small number of cases, not anything like such a number as might be suggested when put into percentages."

President: "Did you notice that this covers 5 years?"

Judge De Courcy: "Yes. I had occasion to examine the situation in our own state, and I think the number of criminal cases that went to the Supreme Court did not exceed 17 a year in any year during the last 5 years, and I am sure that in some years there were not that many."

President: "Your percentage that you speak of was based on the last year?"

Judge De Courcy: "Yes, but the last five years show no substantial difference. I had occasion to go over the figures and I have them fairly well in mind. They run from a dozen to eighteen cases a year, at the outside; and the proportion of them that were reversed would not be more than four or five of the dozen to eighteen.

"Now, the comments here upon this matter of instructions perhaps seem a little strange to one who has never known the practice of written instructions. With an experience of thirty years at the bar and bench, I have never heard any complaint made against oral instructions; have never known anything else. Of course the stenographer is there and makes an exact transcript

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of what the judge says. We have never had any difficulty in meeting the suggested abuse that Professor Higgins speaks of, that after the charge, some shrewd or unscrupulous attorney will get the last word to the jury. That is more dangerous in theory than in practice. I have never known it to be done. It is always the custom after a judge has charged the jury, for counsel who desire to note an exception to the refusal to give some specific request, or to take an exception to some portion of the charge that he does not agree with, to come up with the opposing counsel to the bench, and in whispered conversation which the jury cannot hear, to note the exception; and if any attorney should undertake to make that objection from his seat in order to reach the jury, he would not go very far before the court would see to it that that was a matter that affected only the court and counsel, and not the jury, and of course the lawyer would not be permitted to influence the jury in that way."

Judge Russell: "The court would have the last say on the ruling."

Judge De Courcy: "Yes, but subject to exception. With no knowledge of written charges it is pretty difficult for me to make comparisons. But here are twelve men; in the majority of criminal cases the issues are almost entirely of fact. If the jury have the issue clearly placed before them; if they are instructed as to some of the general principles that will enable them to weigh evidence; if they are put upon their honor to realize that their duty is to get at the truth in the conflicting testimony, there is not much in the way of law in the average criminal case that calls for instruction, and what is given can better be given in the ordinary colloquial manner that a man uses in oral speech easily understood by the jury, stated in a manner calculated to make them understand it, rather than to put in statements of abstract or even concrete principles of law, in phraseology which the average juror does not understand and may entirely misconstrue. The court can explain those things when it comes to the propositions of law. Here is a specific issue raised; the defense is self-defense. If that issue is raised it is a perfectly simple thing to explain briefly what the principle of self-defense means, and concretely, if they believe such and such facts claimed, are proven, that constitutes a perfect defense; and if such and such other facts are proved, it does not. There is no trouble in making the jury understand. I cannot at this moment recall a criminal case where a new trial was granted because of misdirection in the charge. Of course there are some; but they are very few. I must say that, because apparently in this part of the country the written charge is not unusual. Perhaps in respect to the oral charge, since you are not familiar with that practice, the objections may be somewhat theoretical. I have never known any other. It has been in use in our commonwealth for more than a century. I think I can say that it has given universal satisfaction. I have never heard any suggestion of changing to a written charge."

Judge Gemmill: "I am glad Judge De Courcy has made the statement he has. It comports with our own experience and with the general idea of the committee. I want to suggest, however, something in reference to what he said in regard to publishing exact figures as to the reversals in the several states. I am sure the judge will appreciate the fact that that will require a very large amount of work, and only emphasizes the need of some system of statistics."

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"Our Supreme Court lately collected statistics for the last ten years of all reversals and other disposition of cases in the Supreme Court, and that will be published within the year. It is to be hoped all courts will do that, and then we will know where we stand.

"But in response to these questions, but two chief justices in the United States complied with the suggestion of Judge De Courcy. Chief Justice Winslow was one. He very fully expressed it in this language: 'Of this number five were reversed on the merits, six for erroneous rulings on evidence, thirteen for errors in instruction or refusal to instruct.'

"Chief Justice McLean of Iowa replied: 'In 199 appeals there were 53 reversals; eighteen on erroneous instructions, eleven insufficient instructions, nine erroneous admission or exclusion of evidence.'

"The Chief Justice of Georgia responded as follows: 'On errors in instructions, admission or rejection of evidence, 240 affirmed, 37 reversed.' The exact figures are very desirable, but the committee in the length of time that we had could not think of undertaking that task."

Judge Reid, of Wisconsin: "I was a little surprised at the figures for the reason that I have examined the reports for the last two and a half years in Wisconsin, and there were 36 cases reported in the last eight volumes. Out of these 36 there were only two reversals—that is, two reversals where a new trial was granted. There was one reversal on a writ of error taken by the state."

President: "This report covers five years, and certainly in last two or three years the proportion in Wisconsin is much lower. I have not the exact figures, but I have no doubt Judge Reid is right. Whether the court has seen the light or not I leave to your own judgment. During that five years the legislature has passed an Act which the court has used and honestly attempted to put into operation; that is an Act which specifically, both in civil and criminal cases requires that the Appellate Court shall not reverse a case for procedural error unless it appears that there has been substantial injury to the defeated party.

"Now, that question has been touched upon here, whether the Appellate Court can do that, that is, whether the Appellate Court sitting and simply seeing the printed record can be sure that it knows whether an error is substantially prejudicial. It truly is a difficult question; and yet it does seem that there must be some such rule, if the Appellate Court is to be something more than a court where mere logic is to be chopped. After an experience of 20 years on the Appellate Bench, it seems to me that with reasonable certainty an Appellate Judge who examines the case carefully can say whether or not most of the errors which are charged to have been committed, or which may in fact have been committed, are of such class.

"I think that is a thing which the Appellate Courts of this country must come to ultimately.

"That matter of having so large a percentage of cases reversed on erroneous instructions or refusal to instruct seems to me very interesting; and it makes this second recommendation of the committee of course a very important one. In this state the trial judge has the right to charge juries orally, and always has had, though most of them I think are given in writing. But this

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attracts me: the requirement that the exception must be taken in the presence of the jury and before it has retired from the box. In the presence of the jury would seem almost to justify Professor Higgins in his objection—in the presence of the jury. If I should go up and whisper an objection to the judge, that could hardly be said to be in the presence of the jury in any fair sense. But my attention is called to that expression before the jury has retired from the box. There are sometimes quite serious legal questions arising in criminal cases. Is not that an extreme requirement of the defendant's attorney, that he should take his exceptions before the jury has retired from the box? I grant you that it seems to me that he ought not to be allowed to take it weeks afterward, at any time during the term. There is an abuse there, of course."

Judge Gemmill: "I think it was intended that he must make his objection before the jury has retired from the bar."

President: "You mean the objection must be made?"

Judge Gemmill: "Yes."

President: "Is that the idea?"

Judge Gemmill: "Yes, and that is the way it was originally drafted."

President: "Is it the idea that it should be made in open court, so that all can hear it?"

Judge Gemmill: "In open court. That is the federal practice and the federal statute. It means that the objection, whatever it is, must be made before the jury has retired from the bar, made in open court, so as to be heard by all. That is the statute of our own and some other states."

President: "That might work injustice perhaps at some time. You take a criminal case, where a number of close legal questions arise; the defendant possibly is defended by a young lawyer or perhaps by one who does not think quickly. This requires him to jump to his feet at the moment the charge is completed and make his objection. It seems to me that that is requiring a good deal, and perhaps too much. Why should it not be sufficient if it were required to be made before the jury had returned a verdict, and at such time that the trial judge might correct it? The jury is out sometimes for hours; and in such case as I have mentioned, where there is an inexperienced attorney looking over the charge or having it read by the reporter, he discovers that here is something quite important to which he failed to make objection. The jury is still out; and if he then calls the attention of the court to it, the court has ample time to remedy the error if there is one."

W. O. Hart, New Orleans: "I notice on page 120 that from my own state of Louisiana, the statement is made that most reversals are caused by improper arguments of district attorneys and erroneous rulings of trial courts. I recall only one case where the verdict of the jury was set aside because of improper argument of the district attorney. Most of the cases reversed with us, as stated here, are on erroneous rulings of trial courts. In our state the Supreme Court has jurisdiction in criminal cases where the punishment is death, imprisonment at hard labor, or a fine not less than \$300, or imprisonment for at least six months; but this jurisdiction covers only the law. The Supreme Court has no jurisdiction of the facts; and if the trial judge has trenched upon the facts in any form, that would be cause for reversal. Our Supreme Court has held that no matter what the error may be, the judgment will be reversed and

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the verdict set aside and the case remanded, upon the theory that it is impossible to tell how far the error may have influenced the jury in its verdict.

"Now, in reference to the charge, under our law it must be in writing if requested by the defendant; but the Supreme Court has held that if the charge is taken down by the stenographer as given by the judge, that that is a charge in writing; and that is the course usually followed regarding objections that must be made in the presence of the jury and in open court, so that everybody can hear." * * *

Mr. Bird, of Wisconsin: "One sufficient reason for not concurring in the recommendation to limit exceptions to the charge, and objections by counsel to the time of the charge is, that in my judgment, the question of exceptions is not a matter of legislative reclamation at all. We are getting to the point where we must leave that to court rules. I think also, that such legislation as is proposed and as they have in many states would not be efficacious. The result will be that it will force us as practicing attorneys, in order to be on the safe side, to go up and except seriatim to the charge. Nothing is thus accomplished except that we have got ourselves in a position to urge objections later; and if we have a little time to take exceptions, as we do, that usually cuts out many objections that we would otherwise make."

It was moved by Mr. Bird that the latter part of the second recommendation of the committee be not concurred in.

Judge Carter, Chicago: "I have no hard and fast opinion on this question. I think a resolution of this kind should not be adopted. I am not in favor of adopting any recommendation with reference to this report. In my judgment it should be held as a matter of information rather than recommendation, especially as only a few of the members are here, and you can see there is a wide divergence of view. I have had a great deal to do with written instructions, and I have positive views on the question; but you cannot make any hard and fast rule. My own idea was, and I think that this was the purpose of the Institute, not so much in our meetings here to propose certain things to be done, but to give a fund of information that all the states and all the country can draw from." * * *

Mr. Bird's motion was then withdrawn and the report of the committee was referred to the executive board.

PROCEEDINGS OF THE FOURTH ANNUAL MEETING OF THE INSTITUTE.

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The fourth annual meeting of the Institute of Criminal Law and Criminology was held in Milwaukee, Wisconsin, August 29-31, 1912. The headquarters of the Institute were in the Hotel Pfister, and the sessions were held in Walker Hall, at the Auditorium, and in Judge Turner's court room. The first session was called to order at 2 o'clock P. M., August 29, by the President, the Hon. John B. Winslow, who introduced the Governor of Wisconsin, the Hon. F. E. McGovern, who delivered the address of welcome. Gov. McGovern spoke in part as follows:

"The spirit of humanitarianism is in the air, and it is not strange that a new school of penology has arisen to study crime, not from the standard of the protection of society merely, but for the reformation and well being of convicts as well.

"To give effect to these tendencies I understand this Institute was founded, and it is gratifying at this its fourth annual session, to find the interest that created it still increasing.

"It is a pleasure also to see this work taken up with so much enthusiasm. Occasionally in the past, in listening to the proposals of the Wisconsin Branch of this Institute, I have thought that possibly there might be too much zeal. At the last session of the Wisconsin legislature your representatives in this state swept down upon us with demands for all sorts of new laws. The legislature adopted four of these suggestions and then balked. I fear that if it had not done so, as executive, I should; for it seemed at the time that the very foundations of criminal jurisprudence were to be swept away in Wisconsin. At any rate, we, in charge of affairs at the capital, felt that we had gone quite far enough.

"In saying this, there is implied no criticism whatever of the enthusiasm of any member of the local branch. Moral earnestness in the case of reform is always a good thing—the more of it the better. Education must always precede legislation, and both customarily wait all too long upon effective administration.

"I assume that I may say a word about our local conditions. Undoubtedly the social experts present have already applied their trained minds and their methods of research to the penological status of Wisconsin. Of course it will be of no avail for us to attempt to conceal our faults and our shortcomings from you—no more so than it would be for a patient to undertake to mislead his family physician. I shall not attempt to do so.

"We in Wisconsin realize that we have much to learn, much to correct, before we can afford to challenge investigation of experts.

"So far as the apprehension, the trial and the sentencing of criminals are concerned, however, I feel that we do very well. There may be room for im-

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provement even here, as there always is in human affairs, but I can think of nothing that should be revolutionized.

"It is to be regretted that the same cannot be said about our treatment of convicts. Of course, no one will claim that there is brutality practiced at Waupun. The sanitation of the buildings is good, the food is nourishing, the educational facilities are ample and excellent discipline is maintained. In a word, everything that pertains to the physical condition of prisoners is quite satisfactory. Not so, however, I fear, of economic conditions. The fundamental requirement of permanent reformation, is training and education, such as will enable the convict to earn an honest living when he leaves prison. Our penal and reformatory institutions are filled with ne'er-do-wells who are there largely because they have been unable to meet the competition of normal individuals in the ordinary walks of life. Present training and discipline should have for its prime object, putting these people on their feet. It should supply them not only with a motive and a disposition to obey the law, but it should give them confidence and ability to hold their own in the struggle for existence as it is carried on in this workday world of ours.

"Our present system of prison contract labor hardly measures up to this standard. Men go out of prison here with no trade or calling whatever, by which they may earn a living. Tending a knitting machine is girls' work, and however proficient in it able-bodied men may become, in the course of their life in prison, they will never resort to it after the expiration of their terms; and this, it seems to me is a very serious defect.

"The prison, moreover, should be self supporting. It appears to me that there is no reason in the world why the law-abiding citizens of Wisconsin who have been injured by the infraction of their laws, should in addition have imposed upon them the burden of sustaining criminals after they have been caught and sentenced. The very least that should be expected of a convict is that he should be self-supporting. Indeed he should not only earn enough to keep himself, but should be made to work hard enough—and what is more important—at employments productive enough, so that the management of the prison may be able to realize a considerable profit each year. Now, a portion of this profit may properly go to the state, but another portion, and a considerable one, should go to the prisoners themselves, to support their families; and when their sentences have expired, to enable them to go wherever they please, wherever they think they can make a new start in life. I can well understand that when the prison gates swing open a few hundred dollars looks good to the recent convict.

"Now, under this prison contract labor plan, as we have it, the state receives 65c a day for the labor of the prisoners. Under our present arrangements with the contractor, a knitting company, the public furnishes for this sum, buildings, light, heat and power in addition to the labor of the prisoners. Subtracting these items of rent, light, heat and power, there remains about 40c a day as compensation for the work of the convicts, many of whom at proper employments could earn all the way from \$1.50 to \$3.00 a day.

"It is not strange, therefore, that at the last session of the legislature, it was found necessary to appropriate \$50,000 a year for the maintenance of this state institution.

PROCEEDINGS OF THE FOURTH ANNUAL MEETING

"It seems to me it requires no elaboration of argument to show that this plan is wasteful and unjust to the taxpayers of the state, unfair to free labor and outside manufacturers, and discouraging to the prisoners. It is indeed very little that can be said in its favor, except that it provides steady employment for the inmates, and this is one of the problems that is now being studied by the Wisconsin Board of Public Affairs; and when the inquiry is concluded I trust that some action will be taken by our legislature respecting it.

"I realize that these matters cover only a very small part of the whole field that is embraced in your studies and investigation, and I mention them largely to illustrate the practical nature of these investigations you are conducting. By contributing to the proper solution of these and other like problems, you will make not only the convicts, but all society your debtors.

"And so I take great pleasure in welcoming you to Wisconsin. On behalf of the people of our state let me assure you of their interest in your labor, sympathy with your aims and their very best wishes for the success of the work in which you are engaged."

The President then introduced the representative of the mayor of Milwaukee, who, in welcoming the Institute to the city spoke in part as follows:

"Mr. President and Members of the Institute, Ladies and Gentlemen: I have the honor of conveying to you the mayor's message of welcome, and I take pleasure, as I represent him, in assuring you that you are welcome to the city of Milwaukee.

"We welcome this Institute to Milwaukee in the confident hope that the beauty and purity of our city, which has not even a vice district, may inspire the Institute to administer long distance absent treatment, as we might call it, to some of our neighbors across the lake and beyond.

"In mentioning the fact that the criminal law and the criminal procedure of Wisconsin is not entirely defective, briefly I call your attention to the fact that for the past six months on the Supreme Court calendar of the state of Wisconsin, there were some two hundred odd cases, six of them criminal, and not a single reversal; that for the ensuing six months there were 240 cases on the calendar of our Supreme Court, and only eight of these were criminal cases.

"In passing I may state that the criminal laws of the state of Wisconsin are so simple that a backwoodsman may conduct his own defense against the best legal talent of the state, without reversible error.

* * * *

"But my authority is not to make a speech, but to assure the Institute that it is welcome to the city of Milwaukee, and I wish to repeat it for the sake of emphasis. You are welcome."

Mr. W. O. Hart, the chairman of the committee on co-operation with other societies, then announced on behalf of the American Bar Association that the following delegates had been selected to represent the Association in this body: Gov. F. E. McGovern, Wisconsin; S. C. Eastman, New Hampshire; C. O. Baum, of Oklahoma. These represen-

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tatives were recognized and given all the privileges of the Institute during the meeting. The President then read his address, which is published in full elsewhere in this issue. On motion by Nathan William MacChesney, Esq., of Chicago, the Hon. Charles A. De Courcy in the chair, the address of the President was ordered printed as a bulletin of the Institute.

The next order on the program was the annual address, which was delivered by the Hon. Frank L. Randall, of Minnesota. The address, together with the general discussion which followed it, is published elsewhere in this issue.

Joseph B. David, of Chicago, was recognized and received permission to present a resolution which he had already offered to the American Bar Association. The resolution pertained to the furnishing of information to every person indicted for a criminal offense, as to jury, panel, witnesses, etc.

It had been referred to the Committee on Judicial Reform and Procedure in the Bar Association.

"It may not be generally known," Mr. David said, "that under the federal statute there is no right, neither is there under the federal constitution, to have the names of the witnesses upon whose testimony indictment is found, handed to counsel for accused, and as a matter of right the accused is not entitled even to a copy of the indictment; and I submit the matter for consideration."

The President then announced that the resolution would be referred to the Committee on Resolutions to be appointed before the close of the meeting.

After an announcement by the Secretary with respect to registration and entertainment, the report of the Committee on Co-operation with other Societies was presented by Mr. W. O. Hart, Chairman, of New Orleans. In substance the report was as follows:

The Committee on Co-operation with other Organizations reports that letters were addressed to the Governor of each state of the United States, and of Hawaii, Alaska and Porto Rico, the Commissioners of the District of Columbia, the Governor General of the Philippine Islands, the mayors of several leading cities, and the President and other executive officers of a number of organizations, which it was thought would be interested in our work, requesting that each of them should appoint delegates to this, our Fourth Annual Meeting.

In response thereto, letters making appointments were received from the Governors of Alabama, Arizona, Hawaii, Michigan, Illinois, Mississippi, Montana, New Mexico, Pennsylvania, South Carolina, and the Commissioners of the District of Columbia. From the mayor of the city of New Orleans, from the Municipal League, the International Association of Chiefs of Police, the Medico-Legal Society, the Methodist Episcopal Church South, the American Psychopathic Association, the American Probation Society, the American Civic

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Federation, the American Bar Association, and the National Committee on Prison Labor.

It was recommended and ordered that all delegates present from the foregoing societies and organizations, and any others, that might be present be recognized as entitled to all the privileges of the meeting.

The report of Committee G, on Crime and Immigration, was next in order. The chairman, Mr. Speranza, of New York, was not present. The report as printed was accepted on motion by Mr. MacChesney, of Illinois, and referred to the Executive Board with power to re-refer to the committee, if considered advisable, and to instruct it to investigate the subject of the proposals suggested by the committee in its report. The proposals are as follows:

First: "Let us strengthen our ridiculously weak methods of exclusion of alien criminals; let us ask for a passport showing the criminal record, if any, of the arriving alien, and let us insist that the alien's photograph accompany the passport lest a common trick of alien criminals nullify our efforts to bar them.

Second: "Let us enlarge the power of deportation both as to the time within which this government may exercise it and as to the acts for which it may be exercised. To my mind nothing would be so effective as a provision making alien criminals deportable for any crime committed here within five years of their arrival, such deportation to take place at the expiration of their sentence.

Third: "Let us profit by the experience of older countries in the war of the state against crime by overcoming our national prejudice against a secret police. The benefits resulting to the law-abiding citizens of large cities like New York and Chicago by a corps of secret detectives on their police force would be incalculable.

Fourth: "Let us learn to give full faith and credit to the efforts of foreign governments to apprehend criminals. We are too apt to imagine either that foreign governments are happy and anxious to dump their criminals upon us, or that when, by extradition proceedings, they attempt to get some of their criminals back that such proceedings are only a mask for vindictive political action. But countries like Italy which derive an immense benefit by the emigration of their honest citizens are very much interested that the criminal element, small at best, should not affect the preponderatingly honest and useful migratory current. On the other hand, our attitude is unjustified in viewing every extradition proceeding as an attempt to get back a political offender. There are some very dangerous foreign criminals at large today in this country whom we have declined to surrender because technically the proof against them of murder, for instance, would not come up to the finest Anglo-Saxon probative grade! Surely we should welcome for our own interest such modifications of existing extradition conventions as would substitute for the present uncertain and expensive method of surrendering fugitives a simple and inexpensive one.

"Lastly, let us bear in mind that nowadays crime in many cases can be effectively handled only by international action. No country is more vitally

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interested in this than our own, made up, as it is, of so many foreign elements. In our battle against crime we must and should welcome international co-operation. We must act on the assumption that nobody loves a criminal and that the only safe way against him is to segregate him not only from one country, but from all countries. Let us, therefore, encourage international conferences on this subject and welcome the efforts of other countries in this respect."

The following questions also were proposed by the committee and they will be subjects of investigation during the coming year:

First: "Do existing treaty provisions directly or by implication and interpretation sufficiently protect the alien's rights and remedies in the United States?"

Second: "Do existing legal provisions, either in our statutes or in our treaties sufficiently protect the United States from alien criminals?"

Third: "Is it advisable to settle the status of the immigrant by international agreement?"

The President then named the following committees:

Nominating Committee: Mr. MacChesney of Illinois, Mr. Gemmill of Illinois, Mr. Abbott of Pennsylvania, Prof. Gault of Illinois, and Mr. Stevens of Wisconsin.

Committee on Resolutions: Judge De Courcy of Massachusetts, Mr. Higgins of Kansas, Mr. Harper of Illinois, Mr. Fowler of Wisconsin, Mr. William R. Vance of Minnesota.

Second Session, August 30, 9:45 A. M.

The meeting was called to order by the Hon. Alexander H. Reid, of Wausau, Wisconsin, President of the Wisconsin Branch, who delivered an address. This was followed by the reports of State Committees A, B, and C, which it is hoped, together with President Reid's address may receive attention later in this Journal.

The report of Committee D of the Institute, on the Organization of Courts was in order. The chairman, Prof. Pound, of Cambridge, was not present, and no report had been filed. The Institute therefore adjourned to meet at 3 o'clock P. M.

Third Session, Friday, August 30, 1912, 3 P. M.

The meeting called to order by Chief Justice John B. Winslow, of Wisconsin.

The report of Institute Committee C on Judicial Probation and Suspended Sentence was in order. The chairman, Judge Wilfred Bolster, of Massachusetts, was not present, and his report was not on file. Judge De Courcy explained that the chairman of the committee, since the report of a year ago, had sent out invitations for suggestions bearing upon improvements in the probation law. The results of these communications have not yet been compiled.

For the benefit of those delegates who came from states where a

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probation law is not in effect, Judge Backus, of Milwaukee, gave to the convention an account of the working of the probation law as he has seen it in the state of Wisconsin and especially in Milwaukee, as follows:

"The probation law of Wisconsin deals with the first offender, both with the minor and with the adult. Five years ago we petitioned the legislature to pass an adult probation law, but at that time it failed because public sentiment had not been sufficiently aroused, and the question was new in this state. The legislature of 1909 did pass such a law, under which sentence can be suspended in any case, provided the penalty does not exceed a maximum of 15 years, and the prisoner can be placed on probation in charge of a probation officer.

"When I took the bench, this law had just been passed, giving to the courts the power to place on probation all adult offenders who have committed their first state prison offense. The very first man who came before me was a young man, whom I placed on probation. His time expired on the first day of July last, and when he was discharged I took him over to the bank and gave him his bank account pass book, which showed a balance of \$433, and I dismissed him. Since I have been on the bench, a little over two years, I have placed on probation 212 offenders who have committed a state's prison offense. I have disposed in the same way of about 100 more whose charges were reduced, or against whom no information had been filed—for the purpose of finding out whether or not the information should be filed, so as to avoid that stigma, if possible.

"We have now, therefore, under our jurisdiction and control something over 300 persons who have committed a state prison offense who are now out on probation. In the two years but eight of that 300 have been returned to the court.

"But it is the following up of the probation that is important. The judge is the important part of the machinery. He must labor with his probationers day in and day out. Now, the way we work our system here and the reason why it is so successful is because of the way we handle the future probationer who comes before the court. A young man charged with a criminal offense appears at the bar; if he is a minor the court will appoint an attorney for him, if he is unable otherwise to get counsel. It is a rule of court here that no minor shall be informed against unless he is represented first by counsel. Attorneys are promptly appointed; they look into the case; the police officers and the detectives work with the attorneys; the case is adjourned for a few days, and then the court will sit and listen to the facts. The entire history of the individual is laid before the court from the time he entered school, and not until then will the court act.

"If it is a first offense the court will place him in charge of the probation officer, who will assume complete control of the individual. The offender is taken with the probation officer into his room for a heart to heart talk; he will go with the probation officer to his home, if his home is in the city, for an interview with the parents.

"Thus we obtain a complete record. Then if the boy or the young man has no employment, work is found for him. We assume control of his earn-

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ings, and dispose of them to his family, to his bank account, or to himself personally, as needs may dictate.

"No one at the place where he is employed excepting the employer, knows that the young man is on probation. When he returns to the community, therefore, he has a complete opportunity to take advantage of the situation just as if he had not been before the court at all.

"We require monthly reports from the probationer, which are filed; the probation officers make regular visits at the place where the young man works, without the knowledge of the probationer, and finds out how he is doing. In all these ways the system in vogue here has been made successful.

When we were at the legislature in 1909 and urged the passage of a probation law, one of the members of the committee told me that if 10% of those placed on probation could be saved, the full intent of the law would be carried out. In the past two years in this county and city we have saved about 93% of those who have been placed on probation.

"If you will follow out the probation system as it is carried out in this city, you can, with rare exceptions, redeem every normal person who comes before your court."

Judge Gemmill of Illinois, declared himself a thorough convert to the probation system. He said in part that in the last year and a half since the law went into operation more people have been placed upon probation in Illinois than in any other state. "I have," he said, "reports of all the states where probation laws are in operation; and I have particularly the reports from Massachusetts, and they are not altogether creditable. They do not bear out the figures of Judge Backus.

"It is all well enough for us to say that we have saved young offenders; that we have saved a fellow that has gone out and committed some serious crime, when we have put him on probation; that we have made a good citizen of him; no such miraculous saving is ever done.

"I am not attempting to dispute the figures here that Judge Backus has given, and it may be that 97% of those put upon probation did not afterwards come back into court within a limited time, charged with some other offense. That does not mean that they have been saved by any sort of means.

"In 75% of the cases the same evil tendencies are in those men that were there before; you have not transformed the man at all, though he may never commit the same offense again.

"Take, for instance, the matter of petit larceny or larceny up to the value of \$100 or \$200, and sometimes much larger amounts; we never send those cases of first offenders to jail at all. Hundreds of them are simply put on probation because petit larceny grows out of so many different circumstances in the environment of the individual in many cases. We have from 10 to 20 cases a day of women who go into the department stores in Chicago, women from as fine families as there are in the city, women whom you would never suspect of being criminals, who have no criminal tendencies at all, who go into the department stores and see something they want and have not the money to buy it; they do not think anybody is looking; they pick it up from the counter, put it in their clothes, and think they are walking out without being discovered. But a hand is laid on their shoulders, they are arrested and brought into court.

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They have perhaps stolen \$15 worth of goods, sometimes \$50, and although petit larceny in our state is limited to \$15, we stretch the law constantly and have them plead guilty to stealing \$15, and put them on probation. We send none of them to prison at all; and I believe that the law is applicable in just that class of cases. These people are not criminals; they are simply weak; they have been tempted and have not the moral backbone to resist the temptation, and so they are put on probation, and they are followed up. We have probation officers whose whole time is given to the following up of these people. The head probation officer tells me that very many of the people whom we are putting on probation are constantly being lost in the crowd. It is impossible to trace them. I will not undertake to give the number who go out and commit other offenses.

"But as to the boy of 15 or 18 years, who uses a gun. Don't allow the community to take too large risks. I say we are taking too great chances on this question of probation. Let us use it to guard and protect only those people who have no criminal intent; let us not throw its protection about the criminal who goes into the home with a gun loaded ready to commit murder. That man should not be put on probation; he is likely to commit murder, and when you parole him you give him another opportunity for crime. So we have got to be sane on this probation business."

The report of Institute Committee F. on Indeterminate Sentence and Release on Parole was next in order. It was presented by the chairman, Mr. Edwin M. Abbott of Philadelphia. The report is published in full elsewhere in this issue.

Fourth Session, Friday, August 30, 1912, 8 P. M., at Judge Turner's Court Room, Milwaukee.

The meeting was called to order by the presiding officer, Judge Alexander H. Reid, of Wausau, President of the Wisconsin Branch.

The order for the evening was the presentation of the reports of the Wisconsin Branch Committees, D, on the Sterilization of Criminals and Defectives; F, on Prison Labor; and I, on the Treatment of Recidivists. These reports were presented by the chairman, Dr. A. W. Wilmarth, A. F. Belitz, and R. E. Smith, respectively, of Wisconsin. A special report on Prison Labor was presented by Dr. E. Stagg Whitin of New York, Secretary of the National Committee on Prison Labor. It is hoped that the reports may receive full attention in these pages later.

Fifth Session, Saturday, August 31, 1912, at 9 A. M.

The fifth session was called to order in Judge Turner's Court Room by President Winslow. The report of Committee A of the Institute on Recording Data Concerning Criminals was called for. The report as adopted by the committee and distributed at the meeting was a slight modification of that of two years ago. The items of most importance in

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the original report were selected and marked in the copies as distributed. Section VII of the original report was amended to read as follows:

VII. Psychological Examination.

"In addition to the psychiatric examination contained in the medical examination, the psychological examination should be directed towards the determination of the following points.

- (a) "Native ability, apart from school training or environmental factors.
- (b) "Sub-normality. If aberrant, the type and degree of deviation. Both should be particularly estimated with reference to the educability and the possibility of the individual's being a source of danger to the community.
- (c) "The mental content.

"Native ability may be estimated by the determination of the reaction time and by discrimination tests for the pitch of tones and for lifted weights. With the progress that is being made in the study of sub-normality certain tests devised for this purpose should be available in the case of adolescent offenders or adults of a marked degree of backwardness. The association reaction experiment gives knowledge not only of the rate at which ideas are received in response to a word stimulus but also of the quality of the mental content. The stereotyped character of the ideas of insane patients has been very clearly revealed by this method. A similar study of the criminal classes would doubtless also be of value. Emotional traits of criminals could probably be studied by the method of expression with a view to determining their sensitiveness to impressions.

"In the judgment of the committee there should be connected with the court a competent scientific medical man, or if not a doctor of medicine, then a man whose training makes him proficient in the recognition of nervous and sensory disorders, with psychological training to execute the anthropometrical, medical and psychological examinations. This official should be a man of recognized scientific repute, a man whose publications have already established his standing, and his tenure should be made entirely independent of political issue."

Judge Olson of Chicago, chairman, discussed the report as follows:

"I wanted to say a word about the difficulty of establishing such a department even in a large city. In Chicago two years ago, we attempted to institute a system similar to that recommended by the committee, in 1909. We found that the most likely candidate for the position of chief medical examiner was an ex-policeman, who had had ten months' night schooling in medicine and none in psychology except what he got on the beat. If we had created the department he would have got the position, and we abandoned the enterprise for that year. For two years we have been on the lookout for a man capable of holding that position with credit to the court, the city and his profession. We located such a man and found he wanted \$5,000 a year, and a contract for five years before he would undertake the work. We thought it possible to get the aldermen to make that appropriation, until an accident happened to the appropriation of the city under a decision of the Supreme Court, by which they were compelled to reduce their expenditures 30 per cent. for the balance of the year, which of course took away our system of recording data in Chicago.

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When the next appropriation comes in December we will try to get support for such a man. We think that in a large city especially, very little will be accomplished in this line unless the man at the head of the department be exceptionally well qualified for that kind of work. It seems easy to get such men, but apparently it is not. The work must be done on a scientific basis; it must be intensive work. We thought we could require less; but we found that most of the committee were opposed to that, and were of opinion that we would have to make a rather extended investigation in particular cases any way in order to get any results."

The report was referred to the executive board.

The report of Committee number 3 on Criminal Statistics was next in order. The chairman, Mr. Koren of New York, was absent. The report as filed was a record of progress. The committee announced that it would complete its work a year later. No action was taken.

The report of Committee E of the Institute on Criminal Procedure was next in order. As presented, together with the dissenting report of Professor Higgins, of the committee, it is published elsewhere in this issue. The report after discussion by Judge Gemmill, Chairman, Professor Higgins, Judge De Courcy, Judge Russell, Mr. Abbott, and Mr. Hart, was received and referred to the executive board.

The next in order was the report of Committee B of the Wisconsin Branch on Testimony of Non-Residents and Incriminating Evidence, C. A. Fowler, Esq. of Wisconsin, chairman. The report was presented and was followed by that of Committee E on the Wisconsin Branch on Affidavits of Prejudice, B. R. Goggins, Esq., of Wisconsin, chairman.

The report of Institute Committee number 4 on State Societies and Membership, was next presented by Secretary Gilmore, in the absence of the chairman.

Committee B of the Institute, whose report was not ready, requested that it be continued for another year. There being no objection, the request was granted and the committee continued.

The Committee on Resolutions, Judge De Courcy, chairman, next reported as follows:

"There were two resolutions submitted to this committee, one dealing with a proposed amendment to a federal statute, entitling persons charged with the commission of an offense, to a copy of the indictment, and a list of jurors and witnesses. Another suggests that we take some action in the way of approval of particular forms of electing district attorneys. After consultation, the committee are of opinion that both these matters may well be referred to the new executive committee for their consideration or recommendation. I move such reference."

The motion was seconded and unanimously carried.

President: "The following resolutions are referred to the new executive

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board, pursuant to the motion just carried. They were offered by Joseph B David, of Chicago:

(1) "That prosecuting attorneys should be appointed, if possible, by some non-partisan method; and if they are elected, that it should be without regard to political affiliations.

(2) "Whereas, every person indicted for a criminal offense or against whom is filed an information charging the commission of a crime, should be entitled as a matter of right, to a copy of the accusation without cost and also the names and addresses of the witnesses on whose testimony the indictment was found or information filed, and also to a list of the jury which may be called upon to try the accused;

"And whereas Section 1033 of the Revised Statutes of the United States provides:

"When any person is indicted of treason, a copy of the indictment and a list of the jury, and of the witnesses to be produced on the trial of the indictment for proving the indictment, stating the place of abode of each juror and witness, shall be delivered to him at least three entire days before he is tried for the same. When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial.

"Now, therefore, be it and it is hereby resolved, by the American Bar Association that Section 1033 ought to be amended by adding thereto the following:

"When any person is indicted for any criminal offense or against whom has been filed an information charging a crime or misdemeanor, a copy of the indictment or information shall be furnished him without cost at the time or before his arraignment or before he is called on to plead to such indictment or information, and the names and addresses of the witnesses, appearing before the grand jury (in case of an indictment) shall be endorsed on the back of such indictment, and in case of an information the names of the witnesses so far as known to the district attorney at the time of the filing of such information shall be endorsed on the back thereof. Every person charged with a criminal offense other than capital, shall be furnished with a list of the jury and witnesses to be produced on the trial so far as the same may be known to the district attorney at least one entire day before trial.

"And be it further resolved that a bill substantially embodying the foregoing amendments be presented to Congress by and through the proper committee of this Association at the earliest reasonable opportunity, and that such committee use all necessary and proper effort to secure the passage of such bill."

The Secretary then presented his report, which was read, received and placed on file.

The report of the Treasurer was then presented by the Secretary. It was received and filed.

The report of the Managing Editor of the Journal was then received. It detailed the means by which all the leading journals of criminology are being reviewed by the aid of associates and thus placed at the disposal of members of the Institute and others who are interested.

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It contained also a special appeal for co-operation on the part of professors of criminal law in our universities and law schools, which is emphasized editorially in this issue.

In commenting upon this report the President said:

"The Journal is perhaps the greatest single means by which the purposes of the Institute come before the people and get to the people. It is accomplishing its purposes."

The report was received and filed. The secretary then read the report of the Managing Director of the Journal, Frederick B. Crossley of Chicago, who was not present. It is made the subject of editorial comment in this number.

Judge Carter: "Would it not be well to state the terms upon which one can join the Institute and get the magazine?"

Secretary: "The regular subscription price of the Journal is \$3 a year. The constitution provides that wherever there is a state society, membership in the Institute shall come through the state society. We leave to the local society the fixing of its own fee or dues for its local work; the Institute must have \$1.50 for each member coming from the state society, so that membership in a state society and in the Institute, and subscription to the Journal, may be combined in some such manner as follows: (Using Wisconsin as an illustration.) The annual dues of the Wisconsin Branch are \$3; the subscription price to the Journal is \$3; if they are taken together, \$5.50. Of the \$3 received by the Wisconsin Branch, \$1.50 is transmitted to the Institute, \$2.50 to the Journal, and \$1.50 is kept for local work. The state society may make the amount needed for its own work as large as it sees fit, always adding \$1.50 for the Institute and \$2.50 for the Journal.

"In this connection I want to make a statement in regard to Sub-Committee E, on Criminal Procedure. Sub-Committee E is in charge of Professor Mikel of the University of Pennsylvania, who is specially charged with drafting a code of Criminal Procedure. The committee was appointed at the request of the Legislative Drafting Association of New York, and in effect is a committee under the direction of the Association and the Institute. That Association is fortunate in having funds to carry on its work, and has appropriated for the expense of making a tentative draft of a code of criminal procedure, the sum of \$2500 for the ensuing year, and a tentative report will be made at the next annual meeting."

The report of the Managing Director was then received and filed.

The next order was the report of the Nominating Committee, which, in the absence of the chairman was presented by Judge Stevens of Wisconsin. The following named persons were placed in nomination as officers and members of the executive board for the ensuing year:

President: Orrin N. Carter, Chicago, Chief Justice of the Supreme Court of Illinois.

Vice-Presidents: Charles A. De Courey, Boston, Mass., Justice of the Supreme Judicial Court.

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Frank L. Randall, St. Cloud, Minn., General Superintendent, State Reformatory.

Charles R. Henderson, Chicago, Ill., Member for the United States of the International Prison Commission; former President International Prison Congress; Professor of Sociology, University of Chicago.

Robert W. McClaughry, Fort Leavenworth, Kansas, Warden of the Federal Penitentiary.

Miss Jane Addams, Chicago, Illinois, Head of Hull House.

Treasurer: Bronson Winthrop, Esq., New York, N. Y., of the New York Bar.

Secretary: Eugene A. Gilmore, Madison, Wisconsin, Professor of Law, University of Wisconsin.

Executive Board: (Ex Officio) John B. Winslow, Madison, Wisconsin, Chief Justice of the Supreme Court.

(For three year term, expiring 1915):

William N. Gemmill, Chicago, Illinois, Judge of the Municipal Court of Chicago.

Edward J. McDermott, Louisville, Kentucky, of the Kentucky Bar, Lieutenant Governor of Kentucky.

George W. Kirchwey, New York, N. Y., Professor of Law, Columbia University; President, New York Society of Criminal Law and Criminology.

Edwin M. Abbott, Philadelphia, Pennsylvania, of the Philadelphia Bar, Chairman Executive Council Pennsylvania State Society of Criminal Law and Criminology.

Respectfully submitted. (Signed) Nathan William MacChesney, E. M. Abbott, E. Ray Stevens, Wm. N. Gemmill, Robert H. Gault, Committee.

On motion by Judge Reid of Wisconsin the nominees were unanimously elected.

The newly elected president was called for and he responded as follows:

"This honor comes to me unexpectedly, and I have little to say. While I have accepted this office with great reluctance, I appreciate your confidence in bestowing it where you have. My reluctance grew out of two considerations, and I am not going to discuss them: one is the fear that my public duties may prevent me from devoting the time to this office that it requires; and the other, the feeling that the office should go to some other section of the country than to Illinois. But those who have had most to do with the work endeavored to persuade me—and under the leadership of Justices De Courcy and Winslow they have done so—that it is my duty to accept it for the coming year.

"I do not know of any more important work that can be performed in the

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interests of justice and criminal law than can be performed by this organization, if rightly conducted.

"It would not be proper here to make lengthy suggestions. Indeed if I were to attempt to state them, I could not do so in as clear and forceful a manner as has been done by my illustrious predecessor. I agree almost entirely with the recommendations contained in his annual address.

"I want to emphasize the importance of your backing up the Journal of this organization. I believe in that way we can accomplish more than by any other method toward educating the public. I think there is more mis-information even among lawyers on these questions than one would imagine, and I wonder sometimes why we are so impatient with laymen for criticising courts, the legal profession and criminal procedure, when we ourselves have so much mis-information on the subject. We have this morning had a discussion on instructions on which we do not agree. We had a voluminous report yesterday on probation and indeterminate sentence, and yet we find in the various states of the country, that one plan is being tried here and another there. And if you go into the various states, I suppose you will find the people of each state insistent on enforcing their particular law, claiming that it is better than any other law in any other state in the country.

"It seems to me the thing we want especially to do with this organization, is to bring the student, the theorist and the practical man together, and see if we cannot get some better result, something more nearly ideal than we have. Of course we will never have ideal justice or laws by fallible humanity, but we can approximate it. We must try to do so, because if idealists alone draft the law, we will find perhaps the safety valve is not there, or that the airbrake is missing. It is charged that if only the lawyers and judges draft the laws, we will have them archaic on the plan of the stage coach instead of on the plan of modern conveyances. So we want to bring all these forces together, harmonize them, and see if we cannot get better results, and satisfy the public that we are doing the best possible under all the circumstances.

"After all it is not so much a problem of law as a problem of humanity. * * * But you cannot take one problem alone and say, this solved in the right way is going to bring right results. It is a broad field, a great subject. Sometimes we try to make the field too broad in state organizations. Let us take one thing at a time.

"I thank you for this honor, and I hope we may have in the future what I know you have given in the past: the co-operation of the workers all over the country; and this as my parting thought:

They serve truth best who to themselves are true;
And what they dare to dream of, dare to do."

The report of the Committee on Resolutions was then called for and Judge De Courcy responded:

"The committee recommends that the thanks of the Institute be extended to Frank L. Randall, representing the American Prison Association, for his annual address, and Dr. E. Stagg Whitin for his special report on Prison Labor."

Unanimously adopted.

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"The committee desires also to suggest a vote of thanks to the Milwaukee Committee of Arrangements; to Judge Backus, and to Judge Turner, for the hospitality extended to the Institute, and for the use of Judge Turner's court room."

Unanimously adopted.

"Arbitrarily exercising the power of recall, temporarily, and substituting as temporary chairman the Secretary of the Association, I know I speak on behalf not only of those present, but of all the members of the Institute, when I say that we desire to have it appear on record, that this Institute gratefully appreciates the admirable and efficient work of the President during the past year, and the courteous and able manner in which he has presided over our meetings; and I now move that this Institute tender its vote of thanks to the retiring President, Chief Justice Winslow."

Seconded by Judge Carter.

The motion was unanimously carried.

President Winslow: "Perhaps a word from me ought to be said. When I received the telegram last year asking me to become President of the Institute for the year, it seemed to me that I had no qualification for the office; but on the representation that a large part of the labor, or the principal part would be performed by Mr. Gilmore, as Secretary, I accepted. I wish to assure you that Mr. Gilmore has more than performed his duty. Had it not been for him, surely the business of the Institute would not have been arranged and could not have been carried forward. If there be any credit it is practically all due to Mr. Gilmore. At the same time, gentlemen, it has been a pleasure and joy to me to feel that in whatever way I could, I have assisted in the work which this Institute hopes to carry on.

"I want to say just one thing, and it is simply a repetition of a thought suggested by Judge Carter. I feel that we judges and lawyers should all be actively interested in this work, and I say this knowing of course that some of us here are not judges and lawyers, but these particular remarks are made to those who are. We have to meet the practical side. Our friends, the professors, do not meet that side. They perhaps are inclined more to the investigation of the moral aspects of our problems. They need the help of the lawyer and the judge with their experience, it seems to me, to broaden their theories and balance them, so to speak. I have felt it one of the greatest privileges of my life to be able to act as President of this Institute for a year. I shall of course keep my connection with the organization and I hope to meet you all at the next annual meeting."

The Institute was then adjourned *sine die*.

The Wisconsin Branch then held its final meeting for the transaction of business and adopted a resolution to the effect that hereafter it should hold its meetings biennially. The Branch then adjourned to meet in 1914.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

PROFESSORS CHESTER G. VERNIER AND ELMER A. WILCOX.

ASSAULT AND BATTERY.

State v. Brooks, Dela. 84 Atl. 225. *Provocation*. No looks nor gestures, however insulting, and no words, however opprobrious or offensive, can amount to a provocation sufficient to excuse or justify an assault.

EVIDENCE.

United States v. McHie, 190 Fed. 586. *Impounding documentary evidence*. A federal court has power to impound books and papers, although the property of a third person and unlawfully or irregularly seized by officers of the government, where they are shown to be essential evidence in a criminal case.

Curry v. State, Md. 83 Atl. 1030. *Evidence of other offenses*. In a prosecution under an indictment charging accused with the unlawful sale of intoxicating liquors to the prosecuting witness at defendant's place of business, evidence that she sold such liquors at her home to other persons than the prosecuting witness was admissible to show that her home where the liquor was obtained was her place of business, and that she kept liquor for sale at the place where the prosecuting witness testified he bought it.

Meno v. State, Md. 83 Atl. 759. A woman on whom an abortion has been performed is not an accomplice, so that her evidence requires corroboration to establish sufficient proof of guilt.

FORGERY.

Morville v. State, Tex. Cr. App., 141 S. W. 98. *Intent*. On trial for forging the name "Austin Bros." to a check it was held to be immaterial that Austin Bros. were indebted to defendant or to his father, and that defendant intended to credit the amount obtained on the check upon this account.

Ex parte Geissler, 196 Fed. 168. *Filling blank check*. Petitioner and Q having jointly engaged in speculative transactions, pursuant to which they were jointly indebted for over 15,000 marks, petitioner produced a check, signed by him in his firm name, the amount and date being left blank, and asked Q to indorse it in blank, telling him that he was going to see the creditor and arrange the matter with him, that perhaps he would not need to fill the check at all, and in any case would not fill it out for more than 3,000 or 4,000 marks. Q, ultimately indorsed the check, relying on the promise, after which petitioner filled it up for 15,287 marks 65 pfennings, dating the check some months in advance, and delivering it to the creditor. Held, that, as between petitioner and Q, the filling up of the check for an amount larger than that specified in the agreement, but less than the amount of their joint indebtedness, was a mere breach of confidence reposed by one partner in another, and did not constitute forgery.

FORMER JEOPARDY.

Jacobs v. State, Ark., 141 S. W. 489. *Simultaneous Offenses*. Five indictments were brought against defendant charging him respectively with exhibiting gambling devices commonly called (1) Klondike; (2) a crap table; (3) roulette; (4) faro bank; and (5) bird cage. He pleaded guilty to the first indictment, charging the exhibition of Klondike, and was sentenced. On the trial of each

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of the other four indictments he pleaded former conviction. The pleas were overruled and he was sentenced on each of the other charges. It was agreed that all of the devices were exhibited at the same time and place. The statute made it a misdemeanor to "set up, keep or exhibit any gaming table or gambling device." Held that each exhibition is prohibited by the statute, rather than the business of operating a gambling house. Upon trial of the indictment charging the exhibition of Klondike he could not have been convicted on proof that he had exhibited roulette, or any of the other devices named in the other indictments. Hence he had not been in jeopardy on these other charges. All the convictions were affirmed.

GRAND JURY.

People v. Donaldson, 99 N. E. 62 (Ill.) *Time of Selection.* Jury Act (Hurd's Rev. St. 1909, c. 78), sec. 9, requires the summoning of grand jurors twenty days before the day on which they are required to appear. Held, that the intervening time as fixed was for the convenience of the sheriff in serving the jurors and of the jurors themselves, and not for the protection of persons whose cases were to be investigated; and hence the provisions for the time that should elapse were directory only, so that an indictment was not fatally defective, because the grand jury returning the same was drawn only nineteen days before they were required to appear.

HOMICIDE.

State v. Brooks, Dela. 84 Atl. 225. *Self-Defense. Duty to Retreat.* Though decedent first attacked accused, and the attack was of such a character as to create in accused's mind a reasonable belief that he was in danger of death or great bodily harm, accused was bound to retreat if he could safely do so, or use such other reasonable means as were within his power to avoid killing decedent.

State v. MacFarland, N. J. 83 Atl. 993. *Evidence.* A husband was convicted of the murder of his wife by the administration of poison. The evidence was circumstantial. The state introduced a series of letters found in the possession of the defendant, in which the writer, an unmarried woman, expressed the most passionate love for him and a confident reliance upon his promise to marry her as soon as he got rid of his wife by a divorce. Held, that the letters were properly admitted to show a motive for the crime and to repel the presumption arising from the matrimonial relation; but that it was error to permit their use as evidence that the defendant had in fact said that he would soon get rid of his wife by divorce.

INDICTMENT AND INFORMATION.

State v. Oleksy, Dela. 84 Atl. 7. *Constitutional Law.* Rev. Code. 1852, amended to 1893, p. 419 (Del. Laws, c. 384), sec. 12, which provides that, in prosecutions against any vendor of intoxicating liquors, it shall not be necessary to allege that the defendant had no license, but that the fact of license shall be matter of defense under the plea of not guilty, does not violate Const. art. 1, sec. 7, requiring an indictment to plainly inform the defendant of the nature of the accusation against him.

Bailey v. State, Tex. Cr. App., 141 S. W. 224. *Clerical Error.* An indictment for incest charged that the defendant did "unlawfully, carnally know, and incestuously have carnal knowledge of" his niece. Held that as the context

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clearly shows that "carnally" was meant, the misspelling could not have prejudiced the substantial rights of the defendant. The record was sufficiently certain so that the judgment could be pleaded in bar should he be again prosecuted for the same offense; the charge was in such ordinary and concise language as to enable a person of common understanding to know what was meant, and with that degree of certainty that gave the defendant notice of the particular offense with which he was charged, and it enabled the court to pronounce the proper judgment. The conviction was affirmed.

Latham v. State, Tex. Cr. App., 141 S. W. 953. *Clerical Error*. A statute provided for the punishment of seduction under promise of marriage. An indictment under the statute charged a seduction "by means and in virtue of a *prom* of marriage." Held that as the allegation of a promise of marriage was material, and no other words in the indictment alleged such a promise, the indictment was fatally defective, and defendant's motion to quash the indictment should have been granted by the trial court. The case of *Bailey v. State* was distinguished on the ground that in that case the word "canally" could be rejected as surplusage and the indictment would still charge the offense. The conviction was reversed.

Morville v. State, Tex. Cr. App., 141 S. W. 98. *Allegation of Partnership*. An indictment for forging a check signed "Austin Bros." did not allege that Austin Bros. was a partnership nor give the names of the members of the firm. Held, overruling an earlier decision and following later cases, that the indictment was sufficient. In spite of the omission of these allegations the state was properly permitted to prove that Austin Bros. was a partnership to identify its members, and prove that none of them had signed or authorized the check.

Jackson v. State, Ala. App. 57 So. 594. *Custody or Possession*. The defendant lived with her father and mother as a member of their family. Her father had a sum of money which was kept in her trunk. She had the key to the trunk, had used some of the money for the legitimate purposes of herself or of the family, and her father had not objected. At the instigation of a married man, she took the entire fund remaining and eloped with him, without her father's consent. Held that as she was legally her father's servant, the money was in her bare charge or custody, so that in taking it she committed a trespass, and if she took it *animo furandi*, was guilty of larceny.

SENTENCE.

People v. Finucan, 135 N. Y. S. 935. *Place of Imprisonment*. Laws 1905, c. 173, abolished Kings county penitentiary and provided that all commitments which might have been made thereto should be made to some penitentiary in the city of New York, Penal Laws, (Consol. Laws 1909, c. 40) sec. 2181, provides that, on conviction of a crime for which the penalty is imprisonment for a term less than one year, the imprisonment must be by confinement in the county jail, and Prison Law (Consol. Laws, c. 43) sec. 320, empowers boards of county supervisors to agree with the board of a county having a penitentiary therein to keep any person sentenced for a term not less than 60 days, and Code Cr. Proc. sec. 764, provides for a judgment on appeal without regard to technical errors or defects. Defendant under a valid conviction for assault was sentenced for six months to a penitentiary which did not then exist as a place of detention. Held, in the absence of anything to negative a contract with another county

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having a penitentiary, that such defect in the certificate of commitment was technical, and that under the Code of Criminal Procedure the County Court had authority to modify the sentence by correcting the technical defect in respect to the place of imprisonment.

People v. Rosen, 135 N. Y. S. 1049. *Habitual Criminal Act Construed*. Penal Law (Consol. Laws 1909, c. 40), art. 90, sec. 1020, provides that where a person is convicted of a felony who has previously been convicted in this state of any other crime, or where a person is hereafter convicted of a misdemeanor who has been already five times convicted, he may be adjudged an habitual criminal; and section 1021 provides for the supervision of the person of an habitual criminal, the same provisions being contained in Code Cr. Proc. sec. 510-514a. Penal Law (Consol. Laws 1909, c. 40), sec. 1941, provides that a person who, after having been convicted within this state, of a felony or attempt to commit a felony, or under the laws in any other state, of a crime which, if committed in this state, would be a felony, commits a crime, is punishable upon conviction of such second offense by certain added penalties, and Penal Law (Consol. Laws 1909, c. 40) sec. 2189, provides for an indeterminate sentence of persons never before convicted of crime. Held, that to support a conviction as an habitual criminal, the indictment need not allege the prior conviction, all that is required being that the prior conviction be established by competent evidence, the provisions being wholly different from the provision relating to conviction as a second offender, so that one, convicted of burglary might be adjudged an habitual offender and given a sentence other than the indeterminate one, though the indictment did not charge a former conviction.

Ex parte Sargood. Vt. 83 Atl. 718. *Cumulative Sentence*. A statute is not to be given a construction at variance with established rules of procedure unless the intention of the Legislature is plain, so that P. S. 2362, providing that a person convicted of two or more offenses, punishable by imprisonment and sentenced at the same time for more than one of such offenses, may be sentenced to as many terms of imprisonment, as there are offenses of which he is convicted, one term being limited to commence upon the expiration of the other, does not limit the power of the courts to impose cumulative sentences to the same term of court at which the first sentence was imposed; the common law allowing the imposition of such sentences at subsequent terms.

SUSPENDED SENTENCE.

Fuller v. State, Miss., 57 So. 806. *Common Law Power*. The original opinion in this case was noted in the Journal for September on page 430. On rehearing it was held that as the power to suspend the execution of a sentence is not essential to the existence or protection of a court, nor essential to the due administration of justice, courts have no such inherent common law power. But as the order suspending the execution of the sentence during the good behavior of the defendant was void, he could have been taken into custody immediately. As he did not ask to be taken into custody he cannot object to the delay, but is in the same situation as though he had escaped from custody. In such cases a sentence is not satisfied until it has been served. Hence it is immaterial that a longer time has elapsed than was fixed for the duration of the imprisonment. The order committing the defendant to jail to serve the sentence was reaffirmed.

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TRIAL.

Kalen v. U. S. 196 Fed. 888. *Harmless Error.* Where a defendant indicted on two counts was convicted on both and given less than the maximum sentence permissible under either one, it is no ground for reversal of the judgment that one of the counts may have been defective.

Hyde v. U. S., 32 Sup. Ct. Repts. 793. *Delay in Filing Plea in Abatement.* Pleas in abatement, alleging irregularity in the making up of the list of jurors from which the grand jury which found the indictment was selected, were filed too late where four years had then elapsed since the finding of the indictment, and nearly two years since the filing of the mandate of a Federal circuit court of appeals, sustaining the action of the trial court in overruling a demurrer to the indictment, and a bill of particulars had been demanded and furnished.

Clark v. State, Ala. App. 57 So. 1024. *Insufficient Venire.* The judge ordered the sheriff to summon a venire of 61 persons, from whom the jury to try the appellant was to be selected. The sheriff summoned only 59. A jury was selected and the appellant tried and convicted. Held as the venire was illegal the judgment must be reversed.

Whitehurst v. State, Ala. App., 57 So. 1026. *Verdict and Sentence in the Absence of Counsel.* At a trial on a charge of felony, the court received the verdict and imposed sentence while the defendant's counsel was absent. The defendant was present and made no objection. On learning that counsel had not been present the court offered to poll the jury, and reduced the sentence from six to five years. Held that while the court should be extremely careful in acting in the absence of the defendant's counsel, as through some mistake grave injustice might be done, the law does not require that counsel shall be present. As no prejudice was shown in this case the conviction was affirmed.

Gurley v. State, Miss., 57 So. 565. *Comment on Failure of Defendant to Testify.* On a trial for murder it appeared that the defendant and the deceased each had shot the other. The defendant did not take the stand. His counsel, in argument, said that if deceased had gotten well and defendant had died, deceased would have been on trial perhaps, instead of the defendant, on a similar charge. In commenting on this statement counsel for the state said that in that case deceased "would have mounted the stand and told how that occurred." On objection to the statement the court sustained the objection, instructed the jury not to regard it, nor any statement as to the defendant's not testifying, and charged that no prejudice could result from the defendant's failure to testify. Held that the statement held up to the jury the defendant's failure to testify. The action of the court could not and did not restore his statutory right to the defendant. Hence the conviction was reversed.

Wilcek v. State, Tex. Cr. App., 141 S. W. 88. *Comment on Failure of Defendant to Testify.* In argument the prosecuting attorney said "The defendant's defense in this case is,— Although he has offered no testimony to that effect, I do not mean to refer to his failure to testify." On objection by the defense and admonition by the court he said, "I have not referred to defendant's failure to testify. On the contrary, I stated to the jury that I did not so mean to refer to that fact." Held to be clearly an allusion, forbidden by the statute, and so requiring reversal.

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Martin v. Commonwealth, Ky., 141 S. W. 54. *Reopening Case.* In a trial for breaking and entering a railroad station, the state connected the defendant with the crime by a witness who testified that he looked through a crack when the crime was committed and saw the defendant leave the station. After all the evidence had been heard and both sides had announced that they had no more testimony to offer, the judge adjourned court till the next morning. The next morning the defense asked that the case might be reopened, as two witnesses would testify that the crack was not of such size nor so located that it was possible to look through it and see a person leave the station. The state objected because the case had been closed, the witnesses been discharged and gone to their homes, and if the evidence was received a continuance would be necessary to get rebuttal evidence. The judge refused to reopen the case. Held that while the control of the trial rests largely in the wise discretion of the trial judge, whenever his action prejudices the substantial rights of the defendant it will be treated as reversible error. Without the identification the defendant could not have been convicted. The offered evidence contradicted this identification and was not merely cumulative, as there was no other contradicting evidence in the case. Hence the conviction was reversed.

VARIANCE.

Campbell v. State, Ala. App., 57 So. 412. *Ownership of Stolen Property.* An indictment charged the larceny of money, the property of one Patrick. The proof was that Patrick and other members of a gang of laborers were being paid. The paymaster counted out the money due Patrick, put it on the counter, and turned his head away, while Patrick had turned to sign the pay roll. The money disappeared. Patrick found it in the defendant's possession a few minutes later, took it from him and returned it to the paymaster. The paymaster counted it and handed it to Patrick. It was contended that neither title to, nor possession of the money had passed to Patrick when the defendant stole it. Held that when the money was counted out and placed on the counter it was a delivery to Patrick, even though he had not put his hands upon it, and did not know it had been put there for him. The conviction was affirmed.

VERDICT.

State v. Nelson, La., 57 So. 1003. *Disagreement When Polled.* On the trial of a capital case before a jury of twelve men, a verdict of "guilty as charged" was returned. When the jury was polled one juror answered that "it was not his verdict." The state constitution requires that in capital cases there shall be a jury of twelve, "all of whom must concur to render a verdict." Held that the sentence should be annulled and the case remanded.

Hyde v. U. S., 32 Sup. Ct. Reps. 793. *Impeaching Verdict by Testimony of Jurors.* The verdict of a jury, convicting two of the four defendants on trial for criminal conspiracy, and acquitting the others, cannot be impeached by the testimony of the jurors tending to show that such verdict was the result of a bargain, or was induced by coercion from the court.

WEAPONS,

People v. Pignatoro, 136 N. Y. S. 155. *N. Y. Statute Construed.* Penal Law (Consol. Laws 1909, c. 40), sec. 1896, 1897, 1899, as amended by Laws of 1911, c. 195, respectively provide that a person who manufactures specified deadly weapons or sells or keeps for sale the same to any person under the age of 16

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years is guilty of a misdemeanor; that a person who attempts to use against another or carries or possesses any instrument or weapon such as a blackjack, dagger, dangerous knife, or other deadly weapon is guilty of a felony, that an unlicensed person over the age of 16 years who shall have in his possession in any city any pistol or firearm which may be concealed upon the person shall be guilty of a misdemeanor, or if he shall carry it concealed upon his person he shall be guilty of a felony, and any person, not a citizen, who shall carry firearms or dangerous weapons in any public place, shall be guilty of a felony, and that the unlawful carrying of any such weapon by one not a peace officer is a nuisance. Held, that, as the purpose of the law was to prevent the unlawful carrying of weapons by thugs and criminals, minors, and aliens, the act is within the police power of the state; but, as the right to defend one's person and one's property is elemental, this act does not preclude such a defense, and in view of Penal Law, sec. 1898, providing that the possession by any person other than a public officer of any such weapon is presumptive evidence of an intent to use it in violation of law, the carrying of a concealed weapon without a license, where it is procured for the immediate defense of his person or property, is not unlawful, and the possessor is not guilty of a felony.

WITNESSES.

Commonwealth v. Spencer, Mass. 99 N. E. 266. Under St. 1870, c. 175, sec. 1 (Rev. Laws, c. 175, sec. 20), providing that any person, though a party, may testify in any proceeding, but that neither husband nor wife shall testify as to private conversations and neither husband nor wife shall be compelled to testify in the trial under an indictment or other criminal proceeding against the other, and that an accused may testify in his own behalf, but his neglect or refusal to testify shall not create any presumption against him, a wife is a competent, but privileged witness in a criminal prosecution against her husband, and she alone may refuse to testify; and as the statute does not provide that her failure to testify shall not raise any presumptions against him, an inference may be drawn against defendant where his wife, though having knowledge of certain facts and present at the trial, was not placed on the stand, the ordinary rule that one who makes no attempt to produce evidence under his control does so because it is unfavorable to him applying in this case, as it cannot be presumed the wife would have refused to testify if placed on the stand.

NOTES ON CURRENT AND RECENT EVENTS.

ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE.

Kurt Williams on Statistical Investigations of Jail Psychoses.—"The author investigated the psychoses of the insane prisoners received at the Bonn Asylum from 1904 to 1909—232 in number, from which figure he deducted twelve cases on account of not being able to obtain sufficient data with regard to them. The 220 cases considered, he divides into six groups, (I) Those already insane when arrested, 14 cases. (II) Those sent to the Asylum for observation as to their mental condition, 78 cases. (III) Cases of insanity developing in jail but not differing in clinical picture from that which is usual in such cases, 18 cases. (IV) Cases of insanity whose clinical picture was influenced by the imprisonment, 39 cases. (V) Prison psychoses arising upon a basis of degeneration, 30 cases. (VI) Persons previously sound who suffered from prison psychoses, 41 cases. It is noteworthy that the total number is equally divided between cases which were evidently not due to imprisonment and those in which this presumably played a role. Since the first group furnishes no information as to prison psychoses, the author limits his consideration almost exclusively to the last three. The 39 cases of group IV were made up of 8 imbeciles, 14 precocious demented, 1 chronic alcoholic and 16 epileptics. Excluding the single alcoholic, the modifying symptoms were of two kinds, stuporous and paranoid. The stuporous symptom-complex occurred especially in those kept in collective confinement (17 collective to 6 in solitary confinement), while for the paranoid symptom-complex the opposite was the case (8 cases solitary to 1 of collective confinement). Group V, psychoses developing upon a basis of degeneration during imprisonment, was divisible again into the stuporous and paranoid groups containing 16 and 14 cases respectively. Here also the stuporous cases preponderated in collective, the paranoid in solitary confinement, in the proportion of nearly two to one. The stupor usually begins suddenly with a period of violence and aggressiveness, which soon passes into a condition of entire loss of reactivity, the patient lies with open, expressionless eyes and does not speak. There is mainly reduction of sensibility, the pulse is usually rapid (to 120) and there is often Romberg's symptom, increased reflexes and fibrillary contractions of the tongue. There is usually disorientation for time and place due to an amnesia beginning with the moment of excitement and slowly improving. After a period varying from one day to ten months the patient by degrees clears up mentally and the physical symptoms recede. The last residues are often headache and some concentric narrowing of the visual field. The paranoid symptoms also begin as a rule with a period of excitement and destructiveness, after which there develop ideas of persecution, delusions of grandeur and there is entire disorientation as to person. The VI group contains stuporous and paranoid forms with Ganser's symptom-complex as an intermediate link. There were 18 stuporous, 6 Ganser, and 16 paranoid cases. The author concludes that the material considered is hardly sufficiently large to justify the assumption that there is any special prison psychosis, although this seems probable. It would appear, however, that there are two forms of prison psychosis, par excellence, the stuporous developing

POSITIVE DOCTRINES IN COLLECTIVE CRIMES

especially in those undergoing collective confinement, the paranoid form in those in solitude. As exciting causes, trial, the shock of some bad news, punishment, etc., seem sometimes to play a role. In general the prognosis of these disturbances is not unfavorable, though the time needed for recovery varies very greatly."—Summary from the *Journal of Nervous and Mental Diseases*, July, 1912.

C. L. ALLEN, Los Angeles.

Sighele on Adulteration of the Positive Doctrines in Collective Crimes.—In the February issue of *La Scuola Positiva* there is a very interesting note by Scipio Sighele on "Adulteration of the Positive Doctrines in Collective Crimes." Collective crimes are crimes committed by mobs or by people in groups. The author begins by explaining that a Russian writer in 1909 attacked his position upon the subject of collective crime. The Russian writer believes that crimes committed by individuals of a mob should be more severely punished. It is the contention of Sighele in his book upon the subject, and in this note, that the person who commits crime under the influence of the exciting causes of mob action should be treated more leniently because the actors are involved in a complex of external suggestion rather than driven to crime by their own wills. Mob-criminals should more properly be called improvised delinquents. They do not premeditate crime; neither do they meditate upon it. They are simply drawn into the whirlpool often against their own wills, and almost always with their wills unconcerned, by the strong forces of imitation. If the criminal were perverse, then it would be advisable for society to fear him and to punish him severely. But surely, mob-criminals are not perverse, nor are they to be feared by society. A child, a man of the people, a curious individual in a crowd, in a demonstration in the Plaza has suggested to him by the environment something which causes him to shout, to throw a stone, to strike somebody with a cane or with a knife—these persons are not to be held responsible for their acts in exactly the same way in which they would be under conditions of more isolation and tranquillity, since they are neither morally abandoned nor habitual criminals; they yield to the impulse which urges from without, and when they have come to themselves again they deplore what they have done.

The author says that he would not devote so much time to battering down such weak opposition to his ideas, were it not for the fact that the Appellate court in Trapani very recently decided in conformity with the ideas of the opposition, thus running counter to a long series of decisions which upheld and applied the doctrines of the author. On the first of July, 1911, the Prefect of Trapani ordered an individual to be transported to the hospital for treatment because his wife had died a few days before of a contagious disease. The city doctor, accompanied by the carabinieri, came to the home of this individual to execute the orders of the prefect. There he found a large crowd which opposed with shouts and threats the execution of the order. There was some disturbance, and some stones were thrown. Finally the carabinieri overcame the superstitious multitude and the individual was carried to the hospital. Fifteen people were arrested, almost all about the age of twenty, and some under the age of twenty, including a boy of fourteen years and one of thirteen. These persons were taken to the court and charged with violence, assault and resistance to public officials.

PSYCHOLOGY IN A JUVENILE COURT

This was a typical case of the delinquent mob; that is, of improvised crime decided by ignorance and superstition which did not allow the crowd to understand the reason for the order of the Prefect, which was based upon the foundations of hygiene and legitimate care for the public health. It seems to the author that this was a case where this ignorance and this superstition ought to have excused in part, at least, the attitude of the mob. The mob was not composed of bad men at heart. They were deluded people. Instead of being sentenced to jail they ought to have been given an education which would have convinced and persuaded them of their mistake. They were not even violent people, because even if they did descend to the throwing of stones, they did not reach the point of going to excess—a point which they could very easily have reached considering their number and the excitement of the moment; everything ended in a short time and no harm was done except some slight bruises. The Appellate court, instead of treating the delinquents scientifically, took the position that the fact that the individuals were acting as members of a crowd made their crime the more grave, and in coming to this opinion they misinterpreted the doctrines of the Positive school and indeed, stood upon these doctrines to uphold their own opinion. All the old arguments were brought up again—the old arguments that have been overturned, over and over again, and that had, the author had supposed, been finally crushed out of existence by the series of decisions contrary to this decision.

Sighele believes that the light sentence which would have been the result of taking into account the ignorance and the prejudice of the mob would not have favored the individuals illegitimately and would not thus have incited other people to crime of the same kind, but would rather have been much more beneficial than the severe sentence. Prejudice and ignorance are not conquered, but rather are they made more sharp and bitter by years or months in prison. The judges should have taken into consideration, in judging the indicted people who were almost all very young, that not a little portion of responsibility falls upon society, which leaves the multitudes in a deplorable intellectual state.

R. F.

Psychology in a Juvenile Court.—"Believing that if the state is to be intelligent in its treatment of boys and girls who are going wrong it must procure accurate analyses of the social, mental, and physical factors contributing to each child's waywardness, the Juvenile court of Seattle, Washington, has added to itself a department of research. What was accomplished during its first six months is told by Dr. Lilburn Merrill, director of the department. It is interesting to note by way of preface that A. W. Frater, judge of the court, regards the department as one of his most valuable and practical aids in administering delinquency cases. He writes:

"It is our purpose (in the new department), so far as possible, to have every delinquent child, who may be brought into court, first placed under observation in this department. When possible or convenient, the examination is made in the presence of his parent or guardian. Here he is studied sympathetically from the viewpoint of the physician and psychologist who have specialized in the care of this class of children, and a written report of the social, physical and mental factors which may have contributed to the child's delinquency is presented to us when the case comes on for hearing. This report

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is available to the parents, who will thus be apprised of any existing physical or mental defects. Corrective treatment is provided, so far as possible, for every case.'

"Director Merrill has been closely allied with juvenile courts and child-welfare work for ten years. In his report he states two objects with which the department will be concerned during the coming year:

"First, a survey of community conditions contributory to the development of juvenile delinquency, so that we may minimize such social factors.

"Second, a preliminary consultation with every child who is brought into court, and an intensive individual study of those who are actual or potential recidivists. This we shall attempt to do, so far as we may, by a study of the child's

1. Family history,
2. Developmental history,
3. Physical condition,
4. Mental condition.

"For the purpose of this research the consultation room provided for the department has been supplied with suitable instruments of precision for making neurological tests and measuring vision and audition. Fortunately, much of the material we are using is inexpensive, and the cost of the entire equipment need not exceed one hundred dollars. * * * Aside from the use of these few instruments, the study of the children is made by ordinary diagnostic methods.

"The most encouraging feature is the uniform appreciation expressed by the parents of 200 children who have already passed through our hands. An anxious father or mother is not slow in appreciating that we are making a sincere attempt to assist in the diagnosis and treatment of his child who is going wrong. And in several cases we have been gratified in obtaining satisfactory results which could not have been had but for the assistance which this department provides."—From *The Survey*, Vol. XXVIII, No. 14, July 6, 1912.

COURTS—LAWS.

Proposed Law Governing Domestic Relations.—The review of Judge Goodnow's annual report by Mr. William H. Baldwin, published in our last issue, pages 400 ff. makes it pertinent to recall the following draft of a law relating to domestic cases, which was proposed by Mr. Baldwin at the National Conference of Charities and Corrections at Boston, in June, 1911, relating to desertion or non-support of wife or children, and providing punishment therefor; and to promote uniformity between the states in reference thereto.

SECTION 1. Be it enacted by, etc.: That any husband who shall, without just cause, desert or wilfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances; or any parent who shall, without lawful excuse, desert or wilfully neglect or refuse to provide for the support and maintenance of his or her (legitimate or illegitimate) child or children under the age of sixteen years in destitute or necessitous circumstances, shall be guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine of not exceeding five hundred dollars, or by imprisonment in the (1) with hard labor for not

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exceeding one year, (2) or both; and should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife or to the guardian, curator, custodian or trustee of the said minor child or children.

SECTION 2. Proceedings under this Act may be instituted upon complaint made under oath or affirmation by the wife or child or children, or by any other person, against any person accused of either of the above-named offenses. Juvenile courts shall have original and concurrent jurisdiction in all cases arising under this Act. Justices of the peace, police, city and..... courts may try any case arising under this Act, and if, in the opinion of such justice or court, no greater punishment ought to be imposed, may render judgment therein, in the case of justices of the peace for imprisonment not exceeding and in case of for imprisonment not exceeding subject to the right of the accused to appeal as provided by law in other cases. (3)

SECTION 3. At any time before the trial, upon petition of the complainant and upon notice to the defendant, the court, or a judge thereof in vacation, may enter such temporary order as may seem just, providing for the support of the deserted wife or children, or both, *pendente lite*, and may punish for violation of such order as for contempt.

SECTION 4. Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty hereinbefore provided, or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by the court from time to time, as circumstances may require, directing the defendant to pay a certain sum periodically to the wife, or to the guardian, curator or custodian of the said minor child or children, or to an organization or individual approved by the court as trustee, and to release the defendant from custody on probation, upon his or her entering into a recognizance, with or without surety, in such sum as the court or a judge thereof in vacation may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise in full force and effect.

SECTION 5. If the court be satisfied by information and due proof under oath that the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, as the case may be. In case of forfeiture of a recognizance, and the enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife, or to the guardian, curator, custodian or trustee of the said minor child or children.

SECTION 6. No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such

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facts in a civil action. In no prosecution under this Act shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent and compellable (4) witnesses to testify against each other to any and all relevant matters, including the fact of such marriage and the parentage of such child or children. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children shall be *prima facie* evidence that such desertion, neglect or refusal is wilful.

SECTION 7. An offense under this act shall be held to have been committed in any county in which such wife, child or children may be at the time such complaint is made. (5)

SECTION 8. It shall be the duty of the sheriff, warden or other official in charge of the (1), in which any person is confined on account of a sentence under this act, to pay over to the wife, or to the guardian, curator or custodian of his or her minor child or children, or to an organization or individual approved by the court as trustee, at the end of each week, for the support of such wife, child or children, a sum equal to fifty cents (6) for each day's hard labor performed by said person so confined.

SECTION 9. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 10. Repealing clause.

SECTION 11. This Act shall take effect the.....day of.....A. D. 19...

In the final consideration of the form adopted by it on Aug. 26, 1910, for the Uniform Act relating to family desertion and non-support, the Commission on Uniform State Laws left some points indefinite because of a reluctance to indicate great changes in existing laws, leaving it to the different states to work the matter out as might seem best. This was particularly true as to the grade of the crime and the question of hard labor; but it was explained that the Act is intended as a general form of the law, which may be made definite in respect to the two points mentioned, both of which are of very great importance, or may be subject to minor modifications where experience has shown them to be necessary or desirable.

Except in removing the uncertainty as to those two points by fixing the offense as misdemeanor punishable always by hard labor, as it should be, and in suggesting some minor changes by which the Act is made more effective, the form here submitted by Mr. Baldwin, who has given a great deal of attention to the subject, is the Uniform Act recommended by the commission.

R. H. G.

(1) The place of imprisonment will be governed by the local laws.

(2) While there may be no objection to making the term of imprisonment two years, as in the Uniform Law, in states where this does not make the offense felony, and for this reason or some other deprive the lower courts of jurisdiction in the case, experience shows that the power to imprison for one year with hard labor, especially if the possible fine must be worked out in addition, is ample, and the Modified Form has been worded accordingly.

(3) It is quite important that delay and additional expense be avoided by having the lowest courts empowered to pass sentence and enforce the law in non-support and desertion cases. In some states these lower courts do not have jurisdiction of crimes involving imprisonment for a year, and without such au-

ACT REGULATING EMPLOYMENT OF CONVICTS

thority could only bind over to a higher court instead of trying the case. Such a provision as this is therefore necessary in such states, and it should be worded in accordance with existing laws in each state as to the jurisdiction of the lower courts. The lower court can always bind over in cases involving a heavier punishment than it is able to inflict. The Connecticut Act of July 6, 1905, is an example of this.

(4) It is of the greatest importance that the wife should be a compellable witness and the Uniform Law is defective in not protecting this point.

(5) This provision is taken from the Ohio law, where it was added to remove any doubt as to the right to bring the suit in the place where the desertion had occurred, and has been found to be quite desirable. It does not seem to have resulted in any injustice or hardship to those accused, but there the law relates to children only.

(6) This amount has been inserted in the belief that it is as nearly right as possible. The charge against the institution should not be too high, and this is a fair percentage of the average order made by the court under suspended sentence.

An Act Regulating the Employment of Minors in Louisiana.—Declaring it unlawful to allow or permit minors under seventeen years of age to enter, or be employed in any place where pool or billiard games are operated, or to allow such minors to take part or engage in any game of pool or billiards in such places, or to use or play upon pool or billiard tables therein; declaring such acts as contributing to the neglect and delinquency of children and as misdemeanors, and providing a penalty for the violation hereof by fine or imprisonment or both; and repealing all laws or parts of laws in conflict herewith.

Section 1. Be it enacted by the General Assembly of the State of Louisiana; That, it shall be unlawful for any person, whether as proprietor, agent, manager, employee, lessee or otherwise, conducting or carrying on any place where pool or billiard games of any sort are operated, for pay or otherwise, to allow or permit minors under the age of seventeen years within such places, or to be employed therein, or to allow or permit such minors to engage or take part in any game of pool or billiards in such places, or to allow or permit such minors to use or play upon any pool or billiard tables therein.

Section 2. Be it further enacted, etc., That whoever shall violate any of the provisions of this act shall be regarded as contributing to the neglect and delinquency of children and shall be guilty of a misdemeanor, and upon conviction for violation of any of the provisions of this Act shall be fined not less than twenty-five dollars nor more than one hundred dollars, or shall be sentenced to be confined in the parish jail or prison for not more than three months, or may be both fined and imprisoned as above set forth, in the discretion of the court.

Section 3. Be it further enacted, etc., That any laws or parts of laws in conflict herewith, are hereby repealed.

The above Act was approved June 25th, 1912.—From *The New Advocate*, July 5, 1912.

W. O. HART, New Orleans.

An Act Regulating the Employment of Convicts.—Prohibiting their use or employment outside of the prison walls, or of the camps or penal farms the state for private or personal purposes; and providing penalties for the violation of the provisions of this act.

Section 1. Be it enacted by the General Assembly of the state of Louisiana; That it shall be unlawful for any person convicted of any crime and serv-

LAW RELATING TO THE PREVENTION OF PROCREATION

ing a term in the state penitentiary to be allowed any rights or privileges not enjoyed by any other convict in the same class or category; that no such convict shall, under the name or guise of "trusty," be permitted at large without the regulation garb.

Section 2. Be it further enacted, That no convict shall be employed, engaged or worked for private or personal purposes outside of the walls of the penitentiary, camps or penal farms of the state of Louisiana.

Section 3. Be it further enacted, etc., That the state board of control of the state penitentiary shall, immediately, upon the passage of this act, provide a code of rules and regulations classifying all convicts under their control; fixing a maximum and a minimum average of daily, weekly or monthly hours of "hard labor" to be rendered by those in each class and that all such convicts so classified shall be required to perform the labor indicated by their classification, not less than the minimum nor more than the maximum, the same to be determined and fixed by said board of control, except such as may be physically unable to perform such labor and in each such case the certificate of a physician shall be required; hard labor under the terms of this Act meaning any form of actual service that the board of control may deem best suited to any such convict.

Section 4. Be it further enacted, etc., That all violations of the provisions of this Act are declared to be malfeasance in office, and the perpetrator thereof, upon conviction before any court of competent jurisdiction shall be punishable with a fine of not less than one hundred nor more than \$500.00, and in default of payment, by imprisonment of not less than 30 days, nor more than six months in jail, or both, at the discretion of the court, for each and every such offense.

The above Act was approved June 26th, 1912.—From *The New Advocate*, July 5, 1912.

W. O. HART, New Orleans.

The New York Law Relating to the Prevention of Procreation.—(Chapter 445 Laws of New York.) The people of the state of New York, represented in senate and assembly, do enact as follows:

Section 1. Article eighteen of chapter forty-nine of the laws of nineteen hundred and nine, entitled "An act in relation to the public health, constituting chapter forty-five of the consolidated laws," as renumbered article nineteen by section five of chapter one hundred and twenty-eight of the laws of nineteen hundred and eleven, is hereby made article twenty thereof, and sections three hundred and fifty and three hundred and fifty-one of such chapter are hereby renumbered sections three hundred and sixty and three hundred and sixty-one, respectively.

Section 2. Such chapter is hereby amended by inserting therein a new article, to be article nineteen thereof to read as follows:

Article 19. *Operations for the Prevention of Procreation.*

Section 350. *Board of Examiners; Compensation and Expenses.*—Immediately after the passage of this act, the governor shall appoint one surgeon, one neurologist, and one practitioner of medicine, each with at least ten years' experience in the actual practice of his profession, for a term of five years, to be known as the board of examiners of feeble-minded criminals and other defectives, which board is hereby created. The compensation of the members of such

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board shall be ten dollars per diem for each day actually engaged in the performance of the duties of the board, and their actual and necessary traveling expenses. Any vacancies occurring in said board shall be filled by appointment of the governor for the unexpired term.

Section 351. *General Powers and Duties of the Board; Persons to be Operated Upon.*—It shall be the duty of the said board to examine into the mental and physical condition and the record and family history of the feeble-minded, epileptic, criminal and other defective inmates confined in the several state hospitals for the insane, state prisons, reformatories and charitable and penal institutions in the state, and if in the judgment of the majority of said board procreation by any such person would produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy or imbecility and there is no probability that the condition of any such person so examined will improve to such an extent as to render procreation by any such person advisable, or if the physical or mental condition of any such person will be substantially improved thereby, then said board shall appoint one of its members to perform such operation for the prevention of procreation as shall be decided by said board to be most effective.

The criminals who shall come within the operation of this law shall be those who have been convicted of the crime of rape or of such succession of offenses against the criminal law as in the opinion of the board shall be deemed to be sufficient evidence of confirmed criminal tendencies.

Section 352. *Appointment of Counsel to Person to be Operated Upon.*—The board of examiners shall apply to any judge of the Supreme court or county judge of the county in which said person is confined, for the appointment of counsel to represent the person to be examined. Said counsel to act at a hearing before the judge and in any subsequent proceedings and no order made by said board shall become effective until five days after it shall have been filed with the clerk of the court and a copy shall have been served upon the counsel appointed to represent the person examined and proof of service of said copy of the order to be filed with the clerk of the court. All orders made under the provisions of this act shall be subject to review by the Supreme court or any justice thereof, and said court may upon appeal from any order grant a stay which shall be effective until such appeal shall have been decided. The judge of the court appointing any counsel under this act may fix the compensation to be paid him. No surgeon performing an operation under the provisions of this act shall be held to account therefor. The record taken upon the examination of every such inmate signed by the said board of examiners shall be preserved by the institution where said inmate is confined and one year after the performance of the operation the superintendent or other administrative officer of the institution wherein such inmate is confined shall report to the board of examiners the condition of the inmate and the effect of such operation upon such inmate, and a copy of the report shall be filed with the record of the examination.

Section 353. *Unauthorized and Illegal Operations.*—Except as authorized by this act, every person who shall perform, encourage, assist in or otherwise permit the performance of the operation for the purpose of destroying the power to procreate the human species or any person who shall knowingly per-

CHANGE OF VENUE BY THE STATE

mit such operation to be performed upon such person unless the same shall be a medical necessity, shall be guilty of a misdemeanor.

Section 3. This act shall take effect immediately.

The above law was passed on April 16, 1912, three-fifths being present, and received the approval of the governor.

F. W. ROBERTSON, M. D., New York City.

Supplemental Report of the Committee on Intermediary or Municipal Court.—To the president and members of the Pennsylvania Bar Association:

Your committee having filed a report recommending the establishment of a County court for Philadelphia, begs leave to file this supplemental or substitute report.

That, as the resolution creating this committee authorized a full investigation of the conditions in all counties containing cities of the first and second class with regard to the need of an Intermediary or Municipal court, together with the submission of an act of assembly for the creation of such a court, and

As this resolution applied only to Philadelphia, Allegheny and Lackawana counties, and

As Allegheny county now has its County court, and Lackawana county has not expressed any desire for such a court, and

As Philadelphia is the county vitally interested in the report of this committee, and

As the Law Association of Philadelphia has appointed a committee of nine, of which three members of your committee are members, which said committee is to fully investigate the subject and report to the Law Association of Philadelphia not later than December next, your committee therefore recommends the passage of the following resolutions:

1. *Resolved*, That the committee of the Pennsylvania State Bar Association be continued.

2. *Resolved*, That the committee of the Pennsylvania State Bar Association co-operate with the committee of the Law Association in securing such relief as may be found most expedient and desirable for Philadelphia county, and

3. *Resolved*, That the committee of the Pennsylvania State Bar Association shall assist in securing the passage by the legislature of 1913, of such legislation as will be found most expedient and desirable by the Law Association of Philadelphia to secure the relief desired.

Respectfully submitted,

Theodore F. Jenkins, Francis Shunk Brown, William A. Blakeley, Everett Warren, Dunner Beeber, Edwin M. Abbott, Chairman.

Change of Venue by the State.—About ten or twelve years ago, Col. Sam N. Wood, one of the early pioneers of prominence in Kansas, was killed in a county seat fight in a sparsely settled western county of the state. So few were the qualified voters, and so well known the facts, and so strong the feeling, that it was not possible to secure an impartial jury in the county to try the case. So the murderer escaped trial. To remedy this gross miscarriage of justice, Senator F. Dumont Smith, in the legislature of 1903, offered a resolution, (Senate Concurrent Resolution No. 8) to amend Section 10 of the bill

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of rights of the state constitution, permitting the state to take a change of venue in criminal cases under certain restrictions. It seems from the original records that the resolution passed both houses, properly. But there was some uncertainty as to whether what each house passed was exactly the same resolution—there having been some amendment made during its course. Because of this doubt, the attorney general in 1904 advised the secretary of state not to submit the amendment to the people to vote upon. Accordingly it was not submitted nor voted on. Some years later the committee of the state bar association, on Revision of the Criminal Code and the Crimes Act, favoring change of venue by the state, examined the legislative proceedings of 1903, and believed, in the light of decisions of the Supreme court since the opinion of the attorney general in 1904, that the resolution was properly passed. The attorney general this year presented the Supreme court an application to mandamus the secretary of state to place the amendment on the ballot this fall. The Supreme court, however, on June 8, 1912, decided that the amendment must be voted on in 1904 or not at all; that the constitution's requirement to submit its amendments at "the next election" is mandatory. (*Kansas v. Sessions*, 87 Kans. 497.) J. C. RUPPENTHAL, Judge 23rd District, Kansas.

The People's Court of Baltimore.—"The magistrate and constable system in Baltimore has been bad largely because both justices and constables have been dependent entirely upon the fee system. Any intelligent measure of reform would, therefore, involve, in the first instance, the substitution of fixed salaries paid by the city for the fees paid by the litigants themselves to officials.

"The new People's court consists of five justices of the peace, appointed by the governor of Maryland from among the body of magistrates appointed by him. This device was adopted in analogy to the prevailing system, by which the police magistrates and the magistrates for juvenile causes had already been appointed. The presiding justice of the people's court will receive an annual salary of \$2500, and the four associate justices will each receive the same salary. All magistrate cases will either be made returnable before the presiding justice or may be removed by any party to the presiding justice whose duty it is to apportion all cases for trial before himself and the associate justices, in such manner as will best expedite their trial and promote the ends of justice.

"All other justices than those of the People's court will receive a salary of \$10, and no more, per annum, for the performance of all civil judicial duties. All fees are required to be paid to the chief constable and by him covered into the treasury of Baltimore. As a consequence, all civil justices cases will inevitably be tried in the People's court. The necessity for resorting to these devices arises out of the fact that the constitution of Maryland seems to provide for not fewer than twenty-four justices of the peace for Baltimore, a considerably greater number than is needed. The payment of adequate salaries to all of those would impose a heavy burden upon the taxpayers. The five justices of the People's court will, it is believed, be able to try all civil magistrate cases.

"The minimum number of constables apparently permitted by the constitution, twenty-four, is provided for in the new law; one of these, the chief constable, with a salary of \$1800, is constituted the clerk of the People's court. Two assistant constables at salaries of \$1200 each compose his office force.

THE TRIAL OF CAMORRA IN ITALY

Five assistant constables at salaries of \$1200 each act as court clerks to the respective justices of the people's court. Five additional assistants receiving \$1000 each as court bailiffs and the remaining eleven assistants at the same salary, serve the processes of the court.

"If the arrangement above outlined proves satisfactory, it is believed that it will not be difficult to secure an amendment to the state constitution abolishing the magistrate and constable systems, and permitting the establishment of an effective municipal court. In any event, the new court cannot fail to be a decided improvement over the obsolete system which it succeeds."

HORACE E. FLACK in *National Municipal Review*, July, 1912.

The Trial of Camorra in Italy.—The Camorra of Naples is a phenomenon of habitual and associated criminality, very interesting to students of criminal science. I say very interesting for I speak in a foreign review, but in regard to my own country I ought to say grave, sorrowfully grave. In Italy there are as it were two Italies. South Italy presents the problem of a notable inequality in the production of wealth, a great poverty and, therefore a lesser degree of civilization. This inequality of structure in its component parts is doubtless a cause of weakness in the life of the state: it is like an organism which has not all parts sound and so the harmonic coexistence of the whole is thereby injured. However, that has occurred and occurs not only in Italy. Ireland, for instance, in regard to Great Britain is very nearly in the same conditions as the south to the rest of Italy, except, of course, the question of religions, dualism and home rule.

Habitual and associated criminality has found favorable ground in Naples, especially from climatic and historical causes. Even abroad people know that the climate of South Italy is enchanting and tends to idleness and the "dolce far niente." This is wrongly considered as a constant characteristic of such a country, whilst, on the contrary, little by little it is rousing itself from its lethargic sleep and, it is to be hoped, getting the dominion over its impulses and a steadiness in working, by which only a man or a people can become strong. The Neapolitan character is personified in the "Pulcinella," about which Goethe said (*Italienische Reise*, Neapel, zum 19 März): "ein wahrhaft gelassener, ruhiger, bis auf einem gewissen grad gleichgültiger, beinahe fauler und doch humoristischer Knecht" (a really placid and peaceable boy, up to a certain point indifferent, very nearly lazy and yet humorous).

The climate indeed nourishes and maintains slothfulness and hence the need of having recourse to the crime in order to get the comfort of life, that cannot be got from honest work. But this argument of climate is to be taken, as they say, *cum grano salis*. Even under different climates a similar criminality is possible. I may cite one example only, the Black Hand in America. The Black Hand is a form of habitual and associated criminality that displays its baneful activity in an environment, where, on the contrary, there is a life of honest and fruitful activity. However, it is also to be considered that a similar kind of criminality shows itself under different climatic conditions, and this does not deny that climate can be an important factor in it. Also in the common life a similar effect can result from different causes: one man gets a nervous disease by too much work, another by doing nothing.

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The most favorable ground, however, for the Camorra has been prepared by the historical environment. When the countries of upper Italy were prospering as free people or under the dominion, not always tyrannical, of native sovereigns, Naples and Sicily remained under the yoke of foreign conquerors, who extorted as much as they could and as rapidly as possible from the conquered people. "When the government postal authorities," writes Lombroso (*Incremento del delitto*, p. 14), "robbed the correspondence, when the police arrested honest patriots, and negotiating with thieves, allowed liberty to every kind of excess in brothels and prisons, it necessarily contributed to protect the Camorrist as being the man who was able to send a packet with security, to save a person from being stabbed in his cell, or to ransom for a good price a stolen thing, or to give decisions on little disputed questions, perhaps just and certainly less costly and delayed than the decisions, which the tribunals were able to give." These considerations may explain the rise of the Camorra of Naples, but cannot constitute a principle of universal value. We have in history also examples of bandits, who have made themselves administrators of justice in a country where it was badly administered by the public authorities. In Lardinia I have been told the story of a famous criminal, whom the judges were powerless to condemn, because his good actions surpassed his bad.

I believe associated criminality is a phenomenon that will exist as long as criminality, because it is as old as criminality. It has its root in the corporate tendencies of man, *who is inclined to unite himself with his fellows who may have the same aspirations*. The physicians are associated, the lawyers are associated, the workmen are associated in order to attain better their ends, and so the criminals also are associated. This is the natural universal explanation of the phenomenon: only the causes change, that more or less favor it.

At Viterbo (a little and quiet town of Latium) a trial is actually taking place, which has attracted the attention of all the world to the Neapolitan Camorra. The facts are as follows: On the evening of the 5th day of June, 1906, Gennaro Cuocolo and his wife were assassinated at the same time, the former near Naples, the latter in Naples. Cuocolo was *basista*. In the language of Camorra *basista* is one who plans a theft, introducing himself into a comfortable home with the appearance of an honest man and thus getting the confidence of the proprietors: in short he is the Camorrist, who gives to the men who actually commit the crime the *basis* (hence *basista*) for the theft. Cuocolo was condemned by the tribunal of the Camorra for *infamita* (infamy), namely for having denounced to the police some people who were affiliated with the Camorra. His wife was also killed, because she knew all her husband's secrets and thus it was considered necessary to get her also out of the way.

The Cuocolo trial began before the Corte d'Assise (like the French "Cour d' assise" and the German "Schwurgericht," it is a court in which the trial is conducted before a jury) of Viterbo, the 11th day of March, 1911, and it also maintains the fame of legal delay in Italy, because it is not yet near the end. Four days were spent in constituting the jury in this trial. A month was spent in hearing the individuals (of whom thirty-seven are accused of association in order to commit criminal trespasses), amongst whom there is a representative of the clergy, and after their long examinations they were again confronted with their accuser, Abbatemaggio (another Camorrist), as had been already done in the first inquiry.

DUTIES OF PROBATION OFFICER IN RHODE ISLAND

An interesting juridical question has been started in the trial of the Camorra relating to "preventive detention." As the trial is so delayed, it has occurred that none of those accused of association in order to commit criminal trespasses, have passed in preventive detention the maximum time of punishment which the judge may inflict, before the trial has finished. Indeed sect. 248 of Italian Penal Code decrees for the crime of association in order to commit offences (*associazione per delinquere*), without aggravating circumstances, the punishment of imprisonment ("reclusione") from one to five years. The question was started in the sitting of the 14th day of last February by the prosecuting attorney ("Pubblico Ministero") Cav. Saptorio, who maintained that there was no legal cause for the continued imprisonment of some of the accused. "It is certain," remarked the prosecuting attorney, "that when the legal cause has ceased, the preventive imprisonment of an individual, not yet declared guilty by a sentence of condemnation, is no longer legal and becomes illegal." Our Code of Criminal Procedure actually in force does not contemplate this case. It is, on the contrary, expressly foreseen by the Draft Criminal Procedure Code of On. Finocchiaro Aprile, actual minister of justice, which will perhaps become positive law within this year. Thus it is our misfortune, because it is a hasty legislative work, which does not remedy at all the lamented inconveniences of our procedure. Sect. 378 of Draft Criminal Procedure Code of 1911 (an amelioration of Draft 1905) provides indeed: "On any case, the accused has to be set free without any obligation, whenever he has expiated the maximum of punishment established by the law for the offense for which he is being tried." However, although the case is not expressly foreseen in the code in force, the President of the court uttered an ordinance, by which, accepting the point raised by the prosecuting attorney and defence, he set free some of the accused. And really this solution was very just.

Will the jury of Viterbo be mild or severe against the representatives of the Camorra? We don't know. It is certain that the repression of Camorra will be attained by moral and civil education more than by the verdict at Viterbo, because the former makes every one feel the superiority of a living gained from honest work over a living gained from the profits of crime. A good service of police is also an important means of repression. However, one has to bear in mind that no degree of civilization can as yet suppress criminal associations.

GIULIO Q. BATTAGLINI, Professor of Criminal Law and Procedure in the Royal University of Sassari, Italy, Associate Editor of "*La Giustizia Penale*."

An Act Relating to the Duties of the Probation Officer in Rhode Island.
It is enacted by the General Assembly as follows:

SECTION 1. Chapter 352 of the General Laws, entitled "Of the state probation officer and his custody of females," is hereby amended by adding thereto the following sections, viz.:

"SEC. 4. Whenever it shall come to the knowledge of the state probation officer that the family of the prisoner serving sentence for non-support is in destitute circumstances he may, with the approval of the board of state charities and corrections, contribute to the support of such destitute family during the duration of such sentence.

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"SEC. 5. Whenever any person who has been placed in the custody of the probation officer by any court in this state, has left the state while in such custody, the state probation officer in his discretion, with the advice of the attorney-general, is hereby authorized to bring such person back to this state.

"SEC. 6. The sum of twenty-five hundred dollars is hereby annually appropriated to pay the necessary expenditures incurred under the provisions of sections four and five of this act; and the state auditor is hereby directed to draw his orders on the general treasurer in favor of the state probation officer for amounts shown by proper vouchers to have been expended under the provisions of this act."

SEC. 7. For the purpose of carrying the provisions of this act into effect the sum of twenty-five hundred dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated, and the state auditor is hereby directed to draw his orders on the general treasurer in favor of the state probation officer for amounts shown by proper vouchers to have been expended under the provisions of this act.

SEC. 8. This act shall take effect upon its passage, and all acts and parts of acts inconsistent herewith are hereby repealed.

The above act is to amend chapter 352 of the general laws entitled "Of the State Probation Officer and His Custody of Females." R. H. G.

Governor Foss on Penal Reform in Massachusetts.—"The supervision and management of our penal institutions, both state and county, require immediate and thorough renovation.

"The board of prison commissioners is theoretically in control of our penal system, but in fact it has delegated the larger portion of its duties to the chairman. It should sit on questions of parole, but in fact it does not visit the institutions where prisoners are proposed for parole, nor does it hold hearings as a board in this connection. These duties are mainly delegated to the chairman and secretary.

"The industries in our five states and twenty-one county institutions are legally under the supervision of the prison commissioners, but these industries are conducted with little regard either to the interests of the inmates, or to avoiding unnecessary competition with free labor.

"This condition has come about by the gradual shifting of the duties of the board to the chairman; a condition which ought not to be tolerated anywhere. As a result, the board now gives perfunctory attention, or none at all, to a mass of work which is of fundamental importance to the commonwealth.

"The financial operations of our penal institutions are now over a million dollars a year; and, with the present organization of our prison commission, these sums are not, and cannot be, administered as they should be. Consequently our entire penal system has fallen into a rut, and the fundamental purpose of the whole system, which is to reform and help the criminal class, is in abeyance.

"I am told on high authority that our reformatories no longer reform, and that it is difficult to effect the reform of any inmates of these institutions after six months, or a year of residence therein. I have become convinced that the moral atmosphere of these institutions is that of a jail; that the inmates are

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not properly classified, and that a first offender, having been committed for some minor offense, leaves such an institution infected with the moral poison of prison life.

"I am confident that our present method of administering the criminal department of the state is not of the kind which will ever reduce crime, or provide adequately for reforming those who are committed to our penal institutions. Having studied the existing conditions, and realized the difficulty of changing them, I now advocate the following modification:

"The board of prison commissioners should continue as a board of supervision. The administrative duties which it has in fact laid down should be delegated by law to a general superintendent and two or more deputies. Among these administrative officers should be apportioned the duties of general superintendence and of managing the prison industries, and conducting the general business affairs of our penal institutions.

"I advocate restoring to the board the responsibility, as well as the power, of parole, and directing it to visit each of the state penal institutions at least once a month as a board, there to hold hearings upon applications for parole, and to inspect adequately the general condition and management of the institution. I make these propositions for the purpose of effecting necessary changes with the least practicable disturbance of the existing organization, believing that some measure of progress may thus be accomplished.

"I now call your attention to the fact that in this state each year many thousand persons are being sent to jail because they do not have the money with which to pay a fine. Whenever a court imposes a fine or, in default of its payment, a jail sentence, it is clear that the ends of justice would be met by the payment of the fine. Yet last year twelve thousand persons went to jail simply because they did not have the money with which to pay their fines. In fact, they were thus sent to jail for debt. I do not believe that the public conscience of Massachusetts, if directed to this evil, would tolerate it; for the offenses which lead to these jail commitments may show absolutely no criminal intention, but only the ignorant or careless violation of some minor statutes. Such commitments to jail place the prisoner at an unjust disadvantage compared with the man who is able to pay his fine. He remains an object of suspicion, and his life is to some extent degraded in public opinion.

"To correct this abuse, I urge a change in the present law to provide that, in all cases where a fine is imposed, time shall be granted for its payment. All persons punished by a fine, but unable to pay it, should be placed under the supervision of a parole officer and released from parole when the fine is paid.

"Hereto I attach a draft of a legislative act which I think would help to correct some of the existing defects in the administration of our penal system.

EUGENE N. FOSS.

SECTION 1. The chairman of the board of prison commissioners shall appoint, and may remove, two deputy commissioners, who shall receive a salary of \$. each. The appointment and removal of said deputies shall be subject to the approval of other members of the board.

SEC. 2. They shall be executive officers of the board; shall perform their duties under the direction of the chairman, and shall make to the board such reports as it shall require. The board may depute to either of them any of

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its powers and duties relating to contracts, to purchases and sales made for institutions under its care and control; to the inspection and approval of the bills of said institution; to the employment of prisoners therein and in county prisons; to the visitation of county prisons and the inspection of their books and affairs; to the transfer of prisoners, excepting to and from the state prison; and to the work of the agents of the board and the care, assistance and supervision of discharged prisoners. They shall perform such other duties as the board shall direct. In the exercise of the powers and in the performance of the duties delegated or deputed to them by the board, the chairman and the deputy commissioners shall be subject to such rules as the board shall make.

SEC. 3. The state prison, the Massachusetts reformatory; and the reformatory for women shall each have a parole board, consisting of the chairman and two other members of the board of prison commissioners. Said parole boards shall meet at least once a month at the institution to which they severally belong, and shall see all prisoners who are eligible for release. The powers of the board of prison commissioners to issue permits to be at liberty to prisoners in the state prison, the Massachusetts reformatory and the reformatory prison, and to revoke the same, are hereby transferred to, and hereafter shall be vested in, said boards of parole. Two members shall constitute a quorum for the transaction of business. Permits to be at liberty shall be signed by one or more members of the board.

SEC. 4. The prison commissioners shall designate the houses of correction to which men having sentences of one year or more may be committed, shall fix the date on which this section shall take effect, and shall send notice of such designation to district, police and municipal courts, the chief justice of the Superior Court and district attorneys. From and after said date it shall not be lawful to commit any male person having a sentence of one year or more to any house of correction other than those designated as aforesaid, or to any jail.

When a male person is sentenced to a house of correction for a term of one year or more, the clerk of the court shall, without charge, transmit to the master thereof an attested copy of the complaint or indictment under which he was convicted, and the names of the witnesses who testified for and against him at the trial. The probation officer shall send to the prison commissioners a statement regarding the offense of said prisoner; his previous convictions and imprisonments, if any, and such other facts as will be of value to said commissioners in considering his case.

SEC. 5. In making removals of prisoners for the purpose of classification, under the provisions of section 16 of chapter 225 of the revised laws, the prison commissioners shall, so far as practicable, place those who have sentences of one year or more where they will have opportunities for mental and manual instruction.

SEC. 6. The prison commissioners shall establish and maintain in each house of correction designated as aforesaid, a school for the mental and manual instruction of prisoners. When said commissioners have voted to establish any such school, they shall notify the state board of education, which shall thereupon devise plans for the organization and administration of said school and shall have the supervision thereof. The teachers and instructors in said school shall be appointed and may be removed by the prison commissioners.

LYNCHING AND MOB VIOLENCE IN KENTUCKY

The cost of carrying out the provisions of this section shall be paid by the commonwealth.

SEC. 7. If a person is sentenced to a house of correction in a county other than that in which he was convicted or is removed from a house of correction in one county to a house of correction in another county, on an order of the prison commissioners, to promote the classification of prisoners, said commissioners shall fix the amount to be paid for the cost of his support. It shall also decide what part of such cost shall be paid by the county from which he was removed or sentenced, and the remainder of such cost shall be paid by the commonwealth. The county commissioners of either county may appeal to the Superior Court for a revision of such action of the prison commissioners, and said court sitting in either county shall determine the question.

So much of sections 108 and 110 of chapter 225 of the revised laws as is inconsistent with the provisions of this section is hereby repealed.

SEC. 8. The prison commissioners shall make such rules regarding the purchase of supplies and materials for the state institutions under their control as shall secure publicity and competition. Any person dealing in any such supplies and materials who shall file with the warden or superintendent a memorandum, giving his name, address and business, shall be notified when advertisements are published soliciting proposals to sell articles in which he deals.

No purchase of supplies or materials in excess of \$500 for either of said institutions shall be made, excepting as provided in this section, unless the commissioners shall give written authority to do otherwise, and in such case they shall enter upon their records the reasons for their action. The warden or superintendent shall, by public advertisement, invite proposals therefor, and shall furnish to bidders carefully-drawn specifications giving the quantity and quality of the articles wanted and the time and manner of delivery, with samples, if practicable. The advertisement shall contain notice of the time when proposals will be opened at the office of the commissioners. All proposals shall be in writing and sealed. They shall be opened by the warden or superintendent in the presence of the commissioners, who shall cause them to be entered in a book and compared, and shall preserve all proposals for at least one month. The person offering the lowest terms, with satisfactory security for the performance, shall be entitled to the contract, unless it appears to the commissioners that it is not for the interest of the commonwealth to accept his proposal, or to accept any proposal. In such case they shall enter upon their records their reasons for their action.

SEC. 9. If all bids are rejected, the commissioners may direct that new proposals be invited, or may authorize the warden or superintendent to purchase in a way which shall be for the interest of the commonwealth. Every contractor shall give bond in a reasonable sum, with satisfactory surety for the performance of his contract.

The above is a copy of a message and a draft of a proposed law presented to the House of Representatives at Boston on February 9, 1912.

A. W. T.

"An Act to Prevent Lynching and Mob Violence in Kentucky."—The following is a copy of a bill which was introduced in the Kentucky Senate on February 1, 1912, by Mr. Moody. It is known as Senate Bill No. 236:

ILLINOIS AND MASSACHUSETTS PROBATION LAWS

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. It shall be the duty of the sheriff, jailer, constable and all other peace officers, who have notice or reason to anticipate lynching or mob violence of any kind to person or property in their bailiwick, to summon the power of the county and use all the means at their command diligently to protect such person or property. Any officer failing in his duty as herein provided shall be liable on his official bond to any person for all damages sustained thereby.

SEC. 2. Any collection of persons assembled for an unlawful purpose or intending to do injury to anyone or his property without authority of law, shall be regarded as a mob, and any act of violence wilfully done by them to any person shall constitute a lynching.

SEC. 3. It shall be the duty of any officer named in the first section of this act, who has custody of any prisoner, to use diligently all the means at his command to protect such prisoner from mob violence; and if any prisoner shall be taken from the custody of any such officer and lynched by a mob, it shall be prima facie a misfeasance in office by such officer, and it shall be the duty of the Governor to suspend him at once from office and appoint another to discharge the duties of the office, while he is suspended. It shall be the duty of the commonwealth attorney immediately to file in the circuit clerk's office any information against such officer, charging him with said misfeasance in office. The case shall be set for the second day of the next term of the court beginning not less than ten days after the summons is served, and shall have preference over other business. If the officer shall show that he used all the means at his command with due diligence and care, as provided by this act, and notwithstanding this, was unable to protect the prisoner, he shall be acquitted and his suspension from office shall terminate. But if he is found guilty the office shall be declared vacant.

SEC. 4. All laws or parts of laws in conflict herewith are repealed.

W. B. MOODY, New Castle, Ky.

Illinois and Massachusetts Probation Laws.—A law providing for a "System of Probation," and legalizing the ultimate discharge without punishment of persons found guilty of certain defined crimes and offenses, became operative in the State of Illinois during the past year.

A somewhat similar law has been in operation in Massachusetts since 1878, and for more than twenty years the appointment of a probation officer in every municipal, police and district court has been mandatory.

A comparison of the provisions of these two laws is interesting and serves as an illustration of the different methods by which communities approach the solution of similar problems.

For instance, the Illinois law limits the offenses for which a person may be released on probation, while, on the other hand, in Massachusetts "the court may place the person so convicted (of any crime or offense) in care of the probation officer." The Illinois law with other limitations therein mentioned provides that those guilty of "larceny, embezzlement, and malicious mischief, when the property taken or converted or where the injury does not exceed \$200 in value," and "burglary, when the amount feloniously taken does not exceed \$200 in value," may be placed on probation. It would seem that the limitations named in the law are as reasonable as any that could be devised,

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but as one examines the law it seems that no good reason appears for this discrimination.

The intent in the mind of the one committing a crime is the important factor in deciding the action which should be taken by the community. A man forms the intention of picking a pocket. Whether the victim has \$199 or \$201 in his pocket at the time is a mere accident, but it is fair to assume that the intent on the part of the thief is to take all that he finds therein. Hence, it would seem that for the purpose of determining the action of the court a consideration of the intent is better than the determination of the value of the property taken.

The Illinois law defines the terms and conditions of probation, while in Massachusetts the court may place a person on probation "for such time and upon such conditions as may seem proper." The Massachusetts court determines in advance the ordinary conditions of probation, but may vary these conditions or the length of the probation period in each individual case.

In Illinois an excellent form is provided for the discharge of probationers at the end of their probation period. The Massachusetts law is silent on this very important matter, but the practice in most courts is to formally discharge the person if his conduct has been satisfactory, a report to this effect being made by the probation officer at the end of the probation period.

Police officers may be appointed probation officers in Illinois, but if appointed "shall receive no additional compensation because of such appointment." The Massachusetts law provides that "probation officers shall not be active members of the regular police force," and thus makes them ineligible for appointment as probation officers.

The Section of the Illinois law which defines the duties of the probation officers is admirable and a valuable addition to probation practice. While the duties therein described are those generally performed by Massachusetts probation officers, the Massachusetts law does not attempt to clearly define such duties.

Probation officers in Illinois are appointed "for the period of one year, unless sooner removed," while in Massachusetts they "shall hold office during the pleasure of the court which makes the appointment."

"Probation," as defined by the American Institute of Criminal Law and Criminology, "is a judicial system by which an offender against penal law, instead of being punished by a sentence, is given an opportunity to reform himself under supervision, and subject to conditions imposed by the court, with the end in view that if he shows evidence of being reformed no penalty for his offense will be imposed."

The main purpose of probation seems to be the reform of the individual, and the most effective law must be the one which leaves to the presiding justice of the court the greatest discretion in order that the probationary conditions may include the proper remedy in each case.

The International Prison Congress declares that "No person, no matter whatever his age or past record, should be assumed to be incapable of improvement." With this declaration in mind, our effort should be to have a law with provisions so broad that the court, in the exercise of a wise discretion, may apply its beneficent features to every deserving person.

EDWIN MULREADY, Deputy Commissioner on Probation, Boston.

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PENOLOGY.

Assault by a Life Prisoner Made Capital.—"A California statute provides that 'Every person undergoing a life sentence in a state prison of this state who, with malice aforethought, commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, shall be punishable with death.' This is constitutional and does not deny the life prisoner the equal protection of the law, says the Supreme Court of the United States, in *Finley v. People*. The question is to be tested by considering whether there is a basis for the classification made by the statute. Applying that test, the statute is valid. The classification of the statute in question is not arbitrary, but is based upon valid reasons and distinctions. Life termers, while within the prison walls, constitute a class by themselves—a class recognized as such by penologists the world over. Their situation is legally different. Their civic death is perpetual. Manifestly there could be no extension of the term of imprisonment as a punishment for crimes they might commit, and whatever other punishment should be imposed was for the legislature to determine." From *American Law Review*, July-August, 1912, Vol. XLVI, No. 4

Convict Parole Unconstitutional—A Correction.—At page 461 of the September number of this Journal is a note to the effect that the parole law of Pennsylvania is unconstitutional. Mr. Edwin M. Abbott writes that the statement is misleading. Pennsylvania had an Indeterminate Sentence and Parole Act passed in 1909, which act was declared by Judge Sulzberger in July of this year, as unconstitutional. This decision, which has been appealed by the commonwealth, will undoubtedly be upheld by the Appellate Court of the state. The act, says Mr. Abbott, was clearly unconstitutional in many ways, but the court declared it unconstitutional because it had a defective title. This, however, does not do away with probation, parole, and indeterminate sentences in Pennsylvania. Since Mr. Abbott secured the passage of the act in 1911, it has been practically declared constitutional, and it is under this act that the court of the state now operates successfully.

The judges in the state of Pennsylvania, in many instances, refuse to sentence under the act of 1909, for the act simply made them automats, but under the act of 1911, they are following the mandates of the provisions and everybody is satisfied except a few who think that the judges should not sentence in any case. This act has been having beneficial effects in the state prisons.

R. H. G.

Rules Governing Parole in North Dakota.—*Sec. 1.* No inmate shall be paroled until he has served the minimum term provided by law, and has been in the first grade for a period of at least six months, and has fully complied with Article No. 9 of the Revised Codes of 1905.

2. No inmate shall be released on parole until satisfactory evidence has been furnished the board of experts in writing, that employment has been secured for such inmate from some responsible person, certified to be such by the judge of the county court of the county where such person resides.

The application shall embrace a certificate from the Prosecuting Attorney of the County from which the inmate was sent, showing that there is no other

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indictment against him, a certificate under oath from the publisher of one newspaper in the county from which the inmate was received, showing that notice had been given by publication of the intention of the inmate to make the application for parole.

3. No inmate shall be released on parole until he shall have deposited with the warden twenty dollars, and the person furnishing employment shall retain twenty-five per cent of his monthly wages and deposit same with the warden of the penitentiary, until the total amount deposited shall reach the sum of one hundred dollars. The sum so deposited shall be returned to the depositor after the final release of the paroled inmate, providing his parole has not been previously revoked by a formal order of the board of experts. In the event that the terms of the parole are violated, and the parole revoked for cause, the entire amount of money deposited shall be forfeited to the institution.

4. No inmate shall be paroled until the board of experts are satisfied that he will conform to the rules and regulations of his parole.

5. Every paroled inmate shall be liable to be retaken again, and confined within the enclosure of the North Dakota state penitentiary, for any reason that shall be satisfactory to the board of experts, and at their discretion, and shall remain there until released by law.

6. It shall require the affirmative vote of all members of the board of experts to grant a parole.

7. No argument will be allowed at the sessions of the board of attorneys or others in the interests of inmates when they have made application for parole, but such argument may be presented in writing so as to be filed with the application of the inmate to whom it refers.

8. The regular meetings of the board of experts in January, April, July and October shall be known as parole meetings, and no application for parole will be considered at any other meetings of the board.

9. No alterations or amendments shall be made to these rules and regulations, unless at least three members of the board of experts have voted therefor.

10. The parole provided for in Article No. 9 R. C. 1905, shall be in the following form, signed by the president of this board and the warden of the state penitentiary: (*See form below.*)

11. Provided, that all persons paroled under the suspended sentence act shall comply with these rules, and that a copy of these rules shall be furnished to each district judge in this state.

Form of Parole. Know all Men by These Presents: That the board of experts of the North Dakota state penitentiary, desiring to test the ability of an inmate in the said institution, to refrain from crime, and lead an honorable life, do, by virtue of the authority conferred upon them by law, hereby parole the said, and allow him to go on parole outside of the buildings and enclosures of the said institution, but not outside of the State of North Dakota, subject, however, to the following rules and regulations:

He shall proceed at once to the place of employment provided for him, viz:....., and there remain, if practicable, for a period of at least months from this date.

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In case he finds it necessary or desirable to change his employment or residence, he shall first obtain the written consent of the board of experts.

He shall, on the first day of each month, until his final release, according to law, forward by mail to the warden a report of himself, stating whether he has been constantly under pay during the last month, and if not, why not, and how much he has earned, and how much he has expended, together with a general statement of his surroundings and prospects.

He shall in all respects conduct himself honestly, avoid evil associations, obey the law, and abstain from the use of intoxicating liquors.

As soon as possible after reaching his destination, he shall report to showing his parole, and at once enter upon the employment provided for him.

He shall, while on parole, remain in legal custody and under the control of this board.

He shall be liable to be retaken and again confined within the enclosure of the state penitentiary for any reason that shall be satisfactory to the board of experts, and at their sole discretion, and shall remain there until released by law.

The field or parole officer, under the direction of the warden, has special charge and care of persons on parole from the penitentiary. He will visit each paroled person as frequently as possible, and his counsel, advice, and order must be strictly obeyed. He will make a full written report to the management of the penitentiary of every visit, of the condition of, and friendly interest in, the subject of this parole, and he need not fear freely to communicate with the warden in case such paroled person shall lose his situation, or becomes unable to labor, by reason of sickness or otherwise.

Signed by the president, board of experts and the warden, state penitentiary.

Granting of Parole. The regular meetings of the board of experts in January, April, July and October, shall be known as "parole meetings," at which meetings only will applications for parole be considered. Judgment by the board of experts as to the worthiness of the applicants for parole will be based on the following considerations, arranged in the order of their relative importance:

1. The record of the character of the applicant, as established in the institution.
2. The nature and character of the crime committed.
3. His previous record and environment.
4. Information gained from a personal interview with the applicant.
5. Probable surroundings if paroled.
6. All other facts bearing upon the advisability of parole, that this board may be able to obtain.

It may be well to observe that while a good record in the institution is the first requisite and of prime importance, it is not the only consideration in determining fitness for parole, as inmates and their friends sometimes suppose.

No inmate shall be released from the penitentiary from any other than the first grade.

If an inmate's record is that of general obedience to the rules when he becomes eligible for parole, with minor act or acts or omission still charged

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against him, the warden may submit such charges with the circumstances to the board of experts, who may authorize him to remit the same.

When an inmate is released on parole, he shall be furnished transportation to the county whence he came, or where he is promised employment, also with a suit of clothes, and five dollars in money, if he has not to exceed that amount in earnings for labor in the institution.

On failure to obey the law, or the conditions of his parole, while on such conditional release, the inmate will be re-arrested and returned to the penitentiary, where he will enter the third grade and remain there until the expiration of his sentence, and his discharge by due process of law.

What Constitutes Eligibility to Parole. Before an inmate can come before the board of experts as an applicant for parole, he must fully comply with all of the provisions of law, and conform to the rules and regulations governing this institution. The affirmative answer to the following questions must be made in writing and signed by the applicant, before the application will be considered:

Has the applicant served the minimum term provided by law for the punishment of the offense of which he was convicted?

Has the applicant been in the first grade, as provided by the rules of this institution, for at least six months next preceding the time he made application?

Is his record clear for at least three months next preceding making application?

Has the prosecuting attorney certified that there is no other indictment pending against him?

Is his employer's agreement on file?

Has his application for parole been properly advertised?

All inmates of the penitentiary who have met the conditions imposed by law, and the general rules, will be considered applicants for parole, and will be given a personal hearing.

§4. Board of Experts. The warden of the state penitentiary, the prison physician, the chaplain of the state penitentiary, and one other person, to be chosen by the board of trustees of the state penitentiary, shall constitute a board of experts, whose duty it shall be to pass upon the application for discharge of the inmates of the penitentiary who may have been sentenced under the indeterminate sentence provided by law, and also to pass upon the application of the inmates of the penitentiary who may make application to be paroled, as provided by law. The board of trustees shall elect a member of the board of experts at their first meeting (held in April) after this law takes effect, and thereafter at the April meeting on each odd-numbered year. The term of this member of the board of experts shall be two years, commencing immediately after the April board meeting in an odd-numbered year. The chairman and secretary of the board of trustees of the state penitentiary shall certify to the governor and the state auditor all the names of the members of the board of experts as soon as they are elected or constituted members thereof. The board of experts as above constituted shall determine and fix the date when an inmate may be released on parole or discharged after the expiration of the minimum term of sentence, and shall keep a complete record of all the findings and orders of the board. It shall be the duty of the board of experts to provide books of record, application blanks, and to formulate rules and regulations governing the conduct of the in-

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mates, and the manner in which they may become eligible to become applicants for discharge or parole, to meet once in each month, and to keep a complete record of all inmates discharged or paroled, and to make a biennial report to the board of trustees of all rules adopted and of inmates paroled and discharged, and of all statistics pertaining thereto.

Article 9—Parole of Inmates. §10371. What Inmates May Not be Paroled. The following described persons shall not under any circumstances be paroled from the penitentiary:

1. A person convicted and sentenced for the crime of murder either in the first or second degree.
2. A person finally convicted, in any jurisdiction, of a felony other than that for which he is being punished.
3. A person who has not served the minimum time of imprisonment prescribed by law for the crime of which he was convicted.
4. A person who has not maintained a good record at the penitentiary for at least six months previous to his parole. (1891, ch. 92, No. 1; R. C. 1895, No. 8557.)

§10372. *Requirements Precedent to Parole.* No parole shall be granted to any person confined in the penitentiary unless:

1. The warden in writing recommends his parole to the board of trustees.
2. At least four members of the board of trustees approve and indorse said recommendation.
3. The governor approves and indorses such recommendation.
4. The friends of such person have furnished satisfactory evidence to the board of trustees, in writing, that employment has been secured for him with some responsible citizen of the state and certified to be such by the judge of the county court of the county where such citizen resides.
5. The board of trustees is convinced that he will conform to the rules and regulations adopted by said board. (1891, ch. 92, §§ 2, 3; R. C. 1895, §8558.)

§10373. *Grounds for Recommending Parole.* It shall not be lawful for the warden, the board of trustees or the governor, or any or either of them, in considering or recommending the parole of any person confined in the penitentiary to receive, hear or entertain any petition or any argument of attorneys, but the only ground for such recommendation shall be such person's general demeanor and record of good conduct at the penitentiary. (1891, ch. 92, §3; R. C. 1895, §8559.)

§10374. *Breach of Parole. Order of Recommitment.* Any person when on parole from the penitentiary shall be deemed to be in custody, and under control of the board of trustees and subject at any time until the expiration of the term for which he was sentenced, to be taken into actual custody, and returned to the penitentiary. The board of trustees is hereby fully empowered to enforce the rules and regulations made by it for the paroling of persons committed to the penitentiary, and, at any time, when satisfactorily informed that any person out on parole has violated any of such rules and regulations, may order that such person be taken into actual custody, and recommitted to and confined in the penitentiary as provided in his sentence. The board shall enter such order in the record of its proceedings and a copy of it certified by the secretary of the board may be delivered to any sheriff or other peace officer of the state, for

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of the state, for service and return, and it shall be the duty of any such officer to receive the same and to apprehend and immediately return and deliver to the warden at the penitentiary any such person named in such order, and the warden shall receive and re-imprison such person as upon his original sentence. (1891, ch. 92, §1; R. C. 1895, §8560.)

§10375. *Execution of Order. Fees and Payment.* The officer executing any such order of the board of trustees shall indorse thereon a return of his doings thereunder and the said certified copy and return, delivered to the warden with the person named therein, and the warden shall give to such officer, to be retained by him, a certificate acknowledging the receipt of such person, and such certified copy of the order and his return. The fees of any officer for executing any order of the board of trustees for the return of any person to the penitentiary shall be the same as provided by law for the commitment of a person to the penitentiary under a sentence of the court, but in no case shall the fees exceed the sum of one hundred dollars. The board of trustees shall provide in its rules and regulations that any person before being paroled from the penitentiary shall deposit with the warden a sum of money not exceeding one hundred dollars to defray the expenses of his return, and the manner of auditing and paying such expenses; provided that any money so deposited and not so used shall be returned to the person so depositing it at the expiration of the term of sentence of the person, or upon his final discharge from the penitentiary. (1891, ch. 92, §1; R. C. 1895, §8561.)

Amendments and Supplements to Rules Governing Parole, as Approved by the Board of Experts on January 11th, 1912. Sec. 1 of rules governing parole; amended as follows:

"No inmate shall be paroled until he has served the minimum term provided by law, and who shall at the time of the granting of his parole be in the first grade, according to the rules and regulations governing the state penitentiary."

Sec. 8. Rules governing parole; amended to read as follows:

"All the regular monthly meetings of the board of experts shall be known as parole meetings, and no applications will be considered at any other meetings of the board."

"The first paragraph under the heading 'Granting of Parole' on page 8 of the Book of Rules and Regulations; amended to read as follows:

"The regular monthly meeting of the board of experts shall be known as 'parole meetings,' at which meetings only will applications for parole be considered. Judgment by the board of experts as to the worthiness of the applicants for parole will be based on the following considerations, arranged in the order of their relative importance; provided, that in case where sentence is suspended by the judge, that the person whose sentence has been suspended will be accepted by this board, and the initial deposit of \$20.00 waived, provided the judge suspending the sentence shall expressly stipulate that the deposit of \$20.00 is waived. Provided, further, that if the judge in suspending sentence shall find that it be wise and proper to allow the person to engage in business on his own account, then this board will accept such person as a charge of the board provided the judge shall name as a guardian for such person some person designated as his next friend, who shall stand in the same relation to this board

MILLION EARNED ON PAROLE

and the person whose sentence is suspended as the employer regularly provided in these rules heretofore.

R. H. G.

Executive Clemency.—Lieut. Gov. McDermott, when he was the acting Chief Executive of Kentucky took, within the past summer, an admirable stand on the question of pardons. In an interview he is quoted as saying:

"It is not proper for the Governor to overrule the verdict of his jury, merely because he would have rendered a different verdict if he had tried the case. He should interfere with such a verdict only when he is convinced by the record that a fair trial has not been had, or that the verdict is flagrantly against the evidence, or that evidence, discovered since the trial, clearly shows a mistake or a judgment, though correct according to general legal rules, is nevertheless inequitable or wrong by reason of special or exceptional features.

"It is so important to the state that the carrying of concealed deadly weapons should be discouraged, and that manslaughter should be diminished by a strict enforcement of the law against murder or manslaughter, that I cannot give my consent to set aside a judgment where the punishment has not been excessive.

"It is hard to resist the appeal for mercy by the convicted man and his family or friends, but there has been much complaint of the courts for failure to convict a person guilty of manslaughter or murder, and, when a jury and a court have convicted the accused after hearing the evidence, the duty of upholding the courts and the law for the protection of life and property must rest heavily upon the Chief Executive of the state.

"The pardoning power allowed to the Governor by the Constitution imposes upon him a grave duty under his oath of office. I feel the weight of that obligation, and I cannot lightly ignore or weakly discharge it, merely at the prompting of sympathy or at the request of the friends and family of the man condemned by the court and the jury."

From the *Courier-Journal*, Louisville, July 24, 1912.

Million Earned by Men Out on Parole.—"State Parole Officer Ed. H. Whyte, in his monthly report to the California state board of prison directors, has submitted some forceful figures to support the theory of parole. He finds that 1,197 men paroled from San Quentin earned \$748,679.85, and saved out of that amount a total of \$190,499.12. A total of 400 men paroled from Folsom earned \$254,524.02 and saved \$60,984.78. The grand total is \$1,003,203.87 earned and \$251,483.90 saved.

"A quarter of a million dollars put into bank accounts by men who were once supposed to be useless, fit only to be confined in cells and kept from the ordinary walks of life because they could not be trusted.

"Parole officer Whyte's report for the month on this same subject is illuminating, as showing the workings of the parole system, which requires of each man thus liberated a monthly report of his conduct, his cash account, his manner of earning a living, his associates.

"The earnings of all the men on parole in the month of May were \$16,848.28; their expenses were \$12,532.16; their savings, \$4,316.12. This statement refers to 465 men on parole at the beginning of the month—342 from San Quentin and 123 from Folsom. They are at work. The terms of their parole demand that they be continuously employed. Idleness breeds crime.

NEW YORK STATE COMMISSIONER OF PRISONS

"Whyte in the course of his month's work must get a report from every man under his supervision. His report tells that he has received visits at his office from 170 and has himself called on 143.

"Almost as illuminating as the record of the paroled men's wage-earning ability is the record of violations. Whyte in his report goes back to the year 1893 and shows that of the 1,637 men released on parole 1,388 'made good.' That is, 84.8 per cent. kept the faith with the prison directors and fully justified the confidence reposed in them.

"Since 1893 only 249 men violated the strict conditions of their parole—that is, entered saloons, left the state, failed to report or neglected the smaller rules set up for their own protection, as well as the safeguarding of society at large. Of this number 153 were returned to the penitentiaries. Of these 249, too, only 22 committed new crimes. That is, out of 1,637 paroled men only 22, or 1.3 per cent., went back to a life of lawlessness.

"The success of the parole law is therefore wonderfully demonstrated by a ratio of 1.3 per cent. of disappointing ones to 98.7 per cent. of men who, once gone wrong, took advantage of the opportunity to keep out of further trouble."

From *The Review*, Vol. VI., No. 8. August, 1912. R. H. G.

Seventeenth Annual Report of the New York State Commission of Prisons, 1911.—The following is abstracted from the latest prison commission report in the state of New York:

"In our report last year the relationship between probation and parole was fully discussed. Under existing law, prisoners on probation and prisoners on parole are treated as distinct classes and are under separate and independent jurisdiction. Prisoners are paroled from the Elmira and Napanoch reformatories and from the Houses of Refuge for Women by the boards of managers; and from the state prisons by the State Board of Parole. Persons are put on probation by the judges of the several courts before whom they are convicted.

"We are not recommending any new method of procedure for the parole of prisoners or for the placing of persons on probation. It has, however, seemed to this commission that the supervision over both classes after parole and after probation is practically identical; that is, the duties of the parole officer and the duties of the probation officer in relation to the person under his care are substantially the same. In the one case the officer reports to the judge, and in the other to the authorities of the prison from which the convict was released. In each case the officer has charge of a person who has been convicted of a crime, and his function is to endeavor to keep such person from committing any further offenses, to aid him toward reformation, to find him employment, to give him advice, and to report at stated periods how such person is conducting himself. A careful and personal oversight is the essential thing in both cases. It would seem, therefore, that the same officials appointed to look after persons on probation could also supervise prisoners on parole, and that it would be a matter both of economy and efficiency to have this work done by the same officials whenever practicable.

"The present conditions make it necessary that every institution paroling prisoners should have parole officers covering the entire state; and under the probation system it is necessary to have a similar corps of probation officers covering the whole state.

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"It is the judgment of the commission that the supervision of probationers and the supervision of prisoners on parole is an administrative function, and that some method should be worked out for a co-ordination and, to some extent, a combination of the two systems.

"The report recommends that the general supervision of both probation and parole should be conferred on the State Probation Commission, subject to the existing powers and duties of the Board of Parole and boards of managers of institutions. The commission strongly indorses both probation and parole.

* * *

"During the year ending December 31, 1911, about 14,600 persons were put under probationary oversight in the state; and there were about 580 men and women holding appointments as probation officers, about 125 of whom were under salaries.

"The extension of the parole system in this state has been advocated and approved by this commission. Doubt is expressed whether the limitation of the law to first offenders is wise. The question whether or not the second offender should receive a determinate or indeterminate sentence might safely be left to the discretion of the court before which he is convicted; and the question whether or not he should be released on parole might also be safely left to the discretion of the authorities having jurisdiction to grant such parole. It is now the accepted doctrine that the principal objects of imprisonment are the protection of the community and the reformation of the criminal. When these objects can be accomplished as thoroughly by paroling a prisoner as by keeping him longer in confinement, he should be released and allowed to earn his own livelihood to the relief of the taxpayers, and engage in some lawful pursuit for the maintenance of his family.

"The report contains a table showing the number of prisoners paroled during the last three years. The number last year was 832; the number paroled but not discharged at the close of the year was over 1,000. During the year the board considered 1,398 applications; since 1900 the board has considered 8,174 applications and paroled 3,894 prisoners, of whom 3,166 complied with the terms of parole. These figures show that except for parole, our prisons would be congested beyond reason.

"The report shows the number of persons committed during the year for public intoxication and disorderly conduct, and for being drunk and disorderly, was 29,774 males and 7,649 females, an increase of about 2,000 males over the preceding year; the number of females was practically the same. Some of these persons on conviction are sentenced to pay a small fine or a very short term of imprisonment; in other cases heavy sentences are imposed sometimes for a year; and occasionally in addition to that a considerable fine is added, keeping the prisoner in jail for one day additional for each dollar of fine. Some of these punishments are out of all proportion to the offense committed.

"The report again recommends that the county judges or some other designated tribunal be clothed with authority to review and modify the judgments of committing magistrates and to release upon probation and parole any offender committed by any inferior court. This is really an important matter, as in many counties one-half of the commitments to jails and penitentiaries are for public intoxication and kindred offenses; and it is not unusual to find that 75 per cent of the inmates of the county jails have been committed for

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these offenses. We believe the present method of treating these offenders in this state to be unwise. It does not reform the prisoner and occupies a vast amount of time of the police officers and magistrates, and costs a great deal of money. Some other effective remedy should be devised. The probation law has furnished some relief, but it does not reach the cases of those who cannot control their appetites and have become to a greater or less extent confirmed inebriates. These need hospital treatment or something in the nature of such treatment.

"The legislature two years ago passed a permissive law for the city of New York, and later for all cities of the first class, authorizing a hospital and industrial colony for the care of inebriates. That institution has not yet been put in operation, but we trust it soon will be and that the same method may be extended to the state at large. Some relief will be afforded by the tramp farm colony authorized last winter. More or less of the men who will model the habit. The report recommends that this proposed institution receive liberal treatment at the hands of the legislature, in order that it may be put in operation at an early date.

"The report again urges the legislature to establish a state reformatory or industrial and agricultural school for boys convicted of misdemeanors. We believe that the proper treatment of boys when they first begin to go wrong would be a matter of economy to the state. At present, if they are sent to prison at all, they must be sent to jails and penitentiaries where they are more apt to be converted into permanent criminals than to be cured of criminal inclinations, with the result that they soon graduate into the state prisons and spend their lives either in preying upon the community or in some prison at the expense of the taxpayer.

"The number of boys committed during the past year to the penitentiaries, jails and New York City workhouse between the ages of 16 and 20 was 7,381. Adding the number 21 years of age would make 8,857. Boys committed to the "Tombs" and City Prison of Brooklyn are not included in the above, except those who were later sent to the workhouse on Blackwell's Island. During the year there were 2,952 between the ages of 16 and 21 committed to the "Tombs," and 4,361 to the City Prison of Brooklyn. It may be assumed that one-third of the boys committed to county jails were awaiting trial; making that deduction, it would still appear that there were 7,156 boys between the ages of 16 and 21, inclusive, sentenced to jails, penitentiaries and the New York City Workhouse. * * * * *

"At the meeting of the State Association of Magistrates, it was stated by a number of magistrates that under existing law they could not accept cash bail when a prisoner was held on any charge, whether for a felony or misdemeanor. It is, of course, well settled that a committing magistrate cannot accept bail on a felony charge, but it would seem that he should be allowed to accept cash bail in all cases where he is now allowed to accept a bond. When a man is prepared to put up cash bail, there is no good reason why he should be humiliated by incarceration in a police station or a jail until the matter of bail can be adjusted by some other official.

"The report recommends an amendment of the law, so that cash bail may be accepted in such cases.

"Another matter brought up in discussion at this conference is recommended

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for the consideration of the Legislature. When any person is brought before a committing magistrate for any offense which he has jurisdiction to try, he can accept a plea of guilty, and immediately render judgment of sentence. If it is not an offense which he has jurisdiction to try, even on a plea of guilty, he can only hold the offender for the grand jury or for some other court. Unless he gives bail he is then sent to jail, where he remains until his case is investigated by the grand jury. If an indictment is found, it is put on the calendar for trial at some subsequent term of court having jurisdiction.

"It has been found in practice that after this long delay and expense, when the case is reached the defendant often pleads guilty, his plea is accepted and he receives his sentence. In a good many counties the intervals between the meetings of the grand juries are long; in some cases six and even eight months; so that the man is held in jail, sometimes for almost a year before his case is reached for trial, and he then pleads guilty.

"These delays are a hardship to the prisoner, and it would seem that under this method of procedure a vast amount of useless time is consumed and a great deal of cost incurred by the investigation of the grand jury, subpoenaing of witnesses, the preparation for trial by the district attorney, and the maintenance of the prisoner in jail.

"The Commission recommends this matter to the consideration of the Legislature, with the suggestion that a proper provision of law be made so that when a man is charged with an offense less than murder he be allowed to plead guilty at once before any court having jurisdiction to try the offense, with the consent of the court and the district attorney, and receive his sentence; and that he be allowed to do this without the intervention of a grand jury, thereby saving the waste of time, labor and expense mentioned above. The present method keeps the jails filled with prisoners who are willing to plead guilty and begin at once the term of sentence which the court finally imposes. * * * * *

RECOMMENDATIONS.

"The following is a brief resume of the principal recommendations contained in the report:

"1. Expedite the work of relieving the present insanitary and congested condition of Sing Sing prison.

"2. Establish a State industrial and agricultural school for the reformation, education and industrial training of male misdemeanants between the ages of 16 and 21, exclusive.

"3. Enlarge the New York State Training School for Girls at Hudson.

"4. Make the necessary appropriations for progressing the work of establishing labor colonies for tramps and vagrants.

"5. Establish State workhouses to take the places of the present penitentiaries. This is especially urgent, in view of the proposed discontinuance of the Albany penitentiary.

"6. Provide necessary custodial institutions for the proper treatment of feeble-minded delinquents.

"7. Authorize the Probation Commission to supervise both probation and parole.

"8. Provide for increased compensation for the keepers and guards in the State prisons and reformatories.

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"9. Make necessary appropriations for the carrying forward to completion the various improvements now in progress at Auburn and Clinton prisons.

"10. Make necessary appropriations for further equipping the State Farm for Women.

"11. Make the Queens County jail a city institution under the care of the Commissioner of Correction.

"12. Authorize county judges or other designated tribunal to review and modify the sentences of inferior courts.

"13. Amend criminal law so that committing magistrates and police officials may accept cash bail in any case where they can now accept a bail bond.

"14. Seriously consider giving authority to any court having jurisdiction to try the accused, to accept a plea of "guilty" with the consent of the court and the district attorney and pronounce sentence without the intervention of a grand jury. If deemed advisable, propose an amendment to the Constitution authorizing such procedure."

The report is signed by Henry Solomon, president, and Geo. McLaughlin, Secretary.

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PSYCHOLOGY OF TESTIMONY AND REPORT.

The following review was originally published in the *Psychological Bulletin*, Vol. IX, No. 7, July 15, 1912, pp. 264-269. Because of its interest to the readers of this Journal it is reprinted here in full through the courtesy of the editor of the *Bulletin*. [Eds.]

"The most ambitious and important contribution to the psychology of testimony, or—to speak psychologically rather than in the language of jurisprudence—to the psychology of report, is the work of the Commission of the Institute for Applied Psychology for the Investigation of Pedagogical Problems of the Psychology of Report. The members, ten in number, including such well-known writers as Meumann, Stern, Lipmann, and Gross, planned to study the educability of report, to determine whether testimony could be improved by training and to such an extent as to make it worth while, and they determined also to use only events as test-objects, rather than to cling longer to the picture-tests and mere verbal tests of the pioneer experiments. Five studies of educability had already been made and some 15 studies had used events as test-materials, but no previous study had combined these two features.

"The Commission decided to employ physical demonstrations as test-material, because these demonstrations can be repeated with exactness, are familiar in nature to school children and command their fullest attention. After elaborate preliminary trials, three apparatuses were selected and with each three demonstrations were made. The apparatuses were (1) a tank of CO_2 , stored under pressure in fluid form, (2) an air-pump, and (3) a rotation apparatus. With the last-named, to take but one piece, the three demonstrations were (a) the effect of centrifugal force upon a vessel of water, (b) the flattening of elastic circular rings under rotation, and (c) color mixture. The details of all nine demonstrations are chronicled minutely and illustrated by numerous photographs.

"The observers were 196 girls, aged 12 to 13 years.

"In order to bring about a possible effect of training, each observer witnessed all three experiments (9 demonstrations) given at intervals of one week, and after each experiment its three demonstrations were immediately repeated and the observer corrected his written report. The report itself was made by filling out a printed form in which was included (for each experiment of three demonstrations) a series of 12 questions. These questions were so arranged as to be substantially equivalent from the one experiment to the next. They were also classified into seven categories, according as they referred to events, to the statements of the demonstrator, to duration, to sequence, to localization, to color, and to dimensions. For example: 'What happened when I opened the stop-cock?' 'What did I say when I fastened the rubber tube to the iron tank?' 'What color was the rubber tube?' etc. The original report was made in ink. The revisions (following the repetition of the experiment) were made on the same form but in pencil. The article by Baade (1) deals with the results for the questions on the words of the demonstrator only, that of Lipmann (4) with those on color, sequence and localization only. The results for the other categories will appear later.

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"The net results of the experiment, so far as testimony on verbal features was concerned, was that no demonstrable improvement appeared, either as a result of the repetition of each experiment or as the result of the succession of the three experiments. The earlier experiments did exert a strong influence upon the subsequent experiments, but this influence was sometimes favorable and sometimes unfavorable. Baade has, however, done excellent work in elaborating a system of scoring which promises to afford an exactness in dealing with 'logical memory tests' as great as that now enjoyed in dealing with 'rote memory' tests.

"Lipmann, in scoring the estimates of duration and size, has also devised methods of scoring data which, though too complex to be reproduced here, will be of assistance to those who work in this field. The data show that there is, on the whole, some improvement in these estimates as the result of the successive experiments, but only a very slight improvement as the result of repetition of experiments. In general, durations (8" to 3.5') are strongly overestimated, while extents (19 to 57 cm.) are commonly underestimated. There appeared no positive training-effect in reports on colors, locations and sequences, but the repetitions did bring about a decided improvement in these answers. As a rule, a pupil who displayed much inaccuracy in his original report also displayed relatively much inaccuracy in his 'corrected' report.

"So far as reported, therefore, these elaborate and painstaking experiments yield a negative result, and will be chiefly valuable in clearing the way for further studies of the training of observation and memory, in which more potent and vigorous influences are brought into play to effect the improvement.

"A second experimental study of the educability of report is presented in the work of Franken (2), who employed what he terms the '*Methode der Entscheidungs-und Bestimmungsfragen*.' One hundred questions, drawn from school work, were propounded to 150 pupils, aged 11 to 12.5 years. Each question was given first in a form to be answered by 'yes' or 'no.' ('Do you know what city is the capital of Norway?') After 50 such questions, the series was repeated in a form that demanded a specific answer. ('What city is the capital of Norway?') At this point the pupils of one section checked up their answers; those of the second section were simply told that the next set of questions would be given in both forms. All the pupils then answered a second lot of 50 questions in both forms. Comparison of the answers in the first and second form, in the first and second half of the test, and in the first and second sections then permits conclusions as to the effects of training. Seven coefficients of report are devised and formulas are worked out for each of them. The net result is an improvement in cautiousness in asserting positive knowledge, though answers of 'yes' followed by no-answer or by a false answer still persist. The method is of obvious interest and usefulness.¹

"Lipmann (5) is convinced that the unreliability of reports of children is due in the main to two things: first, the child does not distribute his attention in the same way as the adult (though his attention is usually well enough concentrated on those details that he does report); secondly, the child is uncritical

¹ This article will be reviewed somewhat more fully in an early number of the *Journal of Educational Psychology*.

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in filling out gaps in his memory and uses freely material supplied through custom, through his own imagination or through suggestion. It follows that the training of the child in correct report must transform his distribution of attention to one corresponding to that of the adult and must develop a critical attitude toward misstatements in filling out gaps.

"Miss Oppenheim (6) has extended the 'rumor-test' of Stern, Michel, and Kulischer by using two anecdotes, given in immediate succession, with the idea of obtaining conditions more akin to those of daily life, particularly of determining whether details of the one story get confused with those of the other. Each story was transmitted through five observers, adult women. The results show strikingly how, even in so few stages as this, rumor becomes extraordinarily unreliable. There is, in general, a progressive abbreviation of the anecdotes; the story becomes less definite and more general in phrasing; each report deviates in two or three points from the preceding; the errors are confusions, substitutions, alterations of temporal and spatial setting; names and dates suffer particularly.

"Schramm (8) compared 16 men and 16 women students at Freiburg University by the aid of Stern's test-story. It was read once to them and reported 24 hours later. This is virtually a test of 'logical memory.' The author concludes that the data point toward a slight superiority of the women, but the reviewer does not find that the differences exceed the probable error of the results.

"Virtually identical is the method followed by Vos (11), who read a 40-element story to boys and girls 9 to 14 years old, and obtained reproductions three days later. From his 800 reports he draws these inferences: report is very good at the age of 9, best at 10, then deteriorates decidedly to 13, but improves at 14. Boys surpass girls, both in narrative and deposition, save that boys are less cautious when ignorant (more liable to give false answers than no answers). Boys are at their worst at 13, girls at 9 and 12. Pupils from the better class of homes do better than those from the poorer districts. There are more errors in the deposition than in the narrative, even though no suggestive questions are asked. The test hinges chiefly on auditory-verbal memory.

"The work of Heindl, Reichel and Varendonck bears more directly on the application of the psychology of testimony to jurisprudence. Heindl (3) sought to measure quantitatively the amount of error in signalic reports. He used mass tests and talks almost entirely in terms of averages. His method of computation is open to improvement, as Lipmann points out, and despite the extraordinary mass of data obtained (20,000 reports and 80,000 computations), it is questionable whether he has derived the practical conclusions that he sought. In brief, his method was this: observers stated or estimated the stature, age, color of hair and form of face, either of a stranger who appeared conspicuously before them for four minutes or of a well-known person not present during the reporting. Heindl concludes, among other things, that children are perfectly good observers, perhaps more objective than adults, but cannot translate their observation into report skillfully. Sample conclusions are: children overestimate the stature of a strange man by 12 cm., of a strange woman by 5.7 cm., of well-known persons by 5.6 cm., etc.

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"Reichel (7) is a jurist, who writes to impress other jurists with the need of acquaintance with the psychology of testimony. He presents a good account of the present status of forensic psychology, shows in concrete cases how lack of psychological insight may affect the administration of justice, and proposes plans for the study of forensic psychology at universities.

"The contribution of Varendonck appeals to jurists, psychologists and educators alike.

"The literature upon the psychology of testimony was assembled by Stern (9) in 1909 for the period prior to 1908. The same writer has now published a bibliography (10) of 53 titles covering the period 1908 to 1910."

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Cornell University.

GUY MONTROSE WHIPPLE.

PENAL SERVITUDE. By E. Stagg Whittin, Ph. D. National Committee on Prison Labor, New York, 1912. Pp. 161. Price \$1.50.

This book presents a thoughtful study of prison labor by the secretary of the National Committee on Prison Labor. The opportuneness of such a volume is indicated by the fact that during 1911 this problem was referred to in the

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messages of twenty-eight governors, and was dealt with through legislation in a large number of states. The treatment shows research and a comprehensive knowledge of the subject; the analysis of causes, effects and remedies is well reasoned; and the book is an evidence that substantial progress is being made in dealing with one of the most complicated problems in penal administration.

Starting with the economic status of prison labor, Dr. Whitin discusses various aspects of the subject, including especially the methods of production and distribution. In accordance with the attitude of the National Committee on Prison Labor, he disapproves of contract labor as a mercenary exploitation of prisoners, and ably advocates the state use system. From an economic point of view the fundamental trouble with the contract system is that the contractor through being spared the so-called overhead costs—building, power, heat and light—and through securing the labor of the prisoners (which is estimated at about two-thirds the efficiency of ordinary labor) at exceedingly low cost, can undersell manufacturers who employ free labor. Attempts at overcoming the ill effects of this exploitation through such means as restricting by legislation the quantity of prison-made goods to be sold in open market, and as requiring them to be branded "prison-made," are said to have failed. The latter method of control has in fact been declared unconstitutional. Even if a state entirely forbids the sale of the products of its prisons within that state, it is powerless, as is pointed out, without a much needed act of Congress, to prevent the sale within its borders of the goods made in institutions in other states.

The public control of production, and the sale of prison-made commodities exclusively to the state and its subdivisions and to public departments and institutions, are skilfully treated in chapters VII and VIII. This solution of the problem, which has now been adopted by nine states, is shown by the author to be at once logical and practical. The demands on the part of governmental departments and institutions for equipment and supplies such as can be turned out by convicts, are large and varied; and in this preferred market there is a minimum of competition with free labor. Since the state has control of its prisoners, according to the argument advanced, it may justly use their labor to supply the market which it has created by legislation for the ultimate good of the people as a whole.

Alternating with the more argumentative portions of the study are brief sketches of varying merit—some of them in a more or less facetious, quizzical vein, which are intended as introductions to the serious consideration of the topics treated in the succeeding chapters. The inclusion in the main text of more references to actual working conditions among prisoners, and to the detailed results of their labor in specific industries, would, in the judgment of the reviewer, have been a more graphic and effective method of presenting the subject, and would probably have augmented the value of the book for purposes of education and propaganda.

The appendices give extracts from the messages of the governors during 1911, planks from the party platforms, and a digest of legislation pertinent to the subject enacted in the same year; also a report by the Committee on Prison Labor on conditions and needs in the House of Correction at Jessup, Maryland. There are also maps and illustrations.

Albany, N. Y.

ARTHUR W. TOWNE.

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PSYCHOPATHIA SEXUALIS. By *Dr. R. von Krafft-Ebing*, authorized translation of the Seventh German Edition, by C. G. Chaddock, M. D. F. A. Davis Company, Philadelphia, 1908. Pp. XIV + 436.

The general acceptance which the theories of Freud and Jung have gained in recent years among neurologists and psychologists with regard to the importance for psychopathology of the emotional side of the sexual instinct, especially in the direction of its aberrations and suppressions, justifies the translation into English of Krafft-Ebing's *Psychopathia Sexualis*. In fact, the author of this work might reasonably claim, if he has not been repelled by some of the extremes to which the Freudian partisans have pushed their symbolism and interpretation, the whole sexual theory of psychopathology as but the logical outcome, somewhat transformed and amended indeed, of his pioneer study of this field. The notion of a subconscious suppression of sexual experiences which are caused by psychic traumas is not, it is true, to be found in *Psychopathia Sexualis*. It is to be remembered, however, that at the time of the original publication of the book the subconscious had not been recognized as a respectable scientific concept. Both in his recognition of the powerful and pervasive influence which sexuality exercises upon the lives of civilized men, in his recognition of the early development, in some cases, of the sexual instinct; in his careful collection of cases; in his sketch of a psychology of the sexual life which indeed is fragmentary and incomplete, based as it is upon Binet's theory of fetichism, and in his insistence upon the importance of hypnotic suggestion and autosuggestion as therapeutic agencies, Krafft-Ebing blazed the trail which later psychopathologists have followed.

The book which is translated from the seventh German edition is divided into five parts: A Fragment of a psychology of the sexual life; Physiology; General Pathology; Special Pathology; Pathological Sexuality in its legal aspects. After the two brief sections devoted to the psychology of normal love and to the mechanism of its physiological expression, the work proper begins with general pathology, the treatment of which constitutes the bulk of the work.

The sexual neuroses are here classified as *Peripheral* which head is further subdivided into sensory, secretory and motor; *Spinal* which includes affections of the erection center and affections of the ejaculatory center; and *Cerebral* which contain the peculiar matter of this section. The cerebral neuroses include Paradoxia, Anesthesia, Hyperaesthesia and Paraesthesia. Of the great wealth of clinical material which is here collected, the pages devoted to sadism and masochism will doubtless most interest the medical and legal reader. Both of these phenomena are classified as Paraesthesia of the sexual feeling or perversion of the sexual instinct. Sadism is the association of active cruelty and violence with lust, and, as is well known, the acts of the White Chapel murderer and those of Jack the Ripper which sometimes stir our criminal courts, are exaggerated forms of a sexual aberration which in less marked degree is tolerably common. Of less importance from a medico-legal point of view is masochism or the association of passive cruelty or violence with lust. Fetichism, next to sadism, leads to most perverse acts of a criminal nature. Most common are the theft of the fetichistic objects: handkerchiefs, shoes, hair or what not, and the pollution of such objects. Of great interest is the author's treatment of homosexuality. Only too clearly do the histories of these pitiable

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individuals reveal the stigmata of rotten heredity and the evil results of an irrational sex hygiene. Indeed, the whole book is an eloquent and powerful brief for the cause of eugenics. Investigations into the conditions of sexual vice in American cities such as that in Chicago within recent years, inevitably bring to light the fact that large numbers of urnings and perverts of all sorts and persons who make indecent exposures or commit vicious acts in public for a price, infest the districts in which prostitution is permitted and may fairly be considered the by-products of the system. In discussing the therapy of homosexuality, indeed, what he says applies to the whole field of psychopathia sexualis, Krafft-Ebing, upon the basis of the fact that this condition practically always results from masturbatic neurasthenia, wisely urges the necessity of prophylaxis. As he says, p. 321: "In many schools and academies masturbation and vice are actually cultivated. . . . In obedience to affected prudery, the *vita sexualis* is veiled from the developing youth and not the slightest attention given to the excitations of his sexual instinct. How few family physicians are ever called in, during the years of development of children, to give advice to their patients that are often so greatly predisposed!" In view of the instruction in sex hygiene which has been introduced into some schools and colleges and the growing interest in eugenics the dawn of a better day in these matters seems slowly to be appearing.

University of Washington.

H. C. STEVENS.

VERBRECHUNGSPROPHYLAXE UND STRAFRECHT. By Johannes Nagler. Wilhelm Engelmann, Leipzig, 1911. Pp. VI, 265.

Prof. Nagler's work is the fourteenth volume in the "Kritische Beiträge zur Strafrechtsreform" series, the aim of which is to provide the classical school of German penologists with a regular outlet for systematic and especially for critical studies similar to the "Mitteilungen" of the International Criminalistic Society, which represents the modern or sociological school. In the editors' announcement of this series it is distinctly stated that they do not propose to write in defense of their own school. They feel that the application of the classical theories in the existing penal institutions and practices is sufficient guarantee of their safety and practicability; they aim to subject the views of their opponents to systematic criticism in the light of the classical viewpoint. In other words, their aim is to counteract the influence of the sociological school, which, in their opinion, would subject the whole penal machinery of the state, evolved after a long and successful struggle to its present satisfactory position, to experiments which they deem dangerous and futile because based upon what the classicists believe are but a mass of generalities and half baked principles.

The present volume deals with the prophylaxis of crime. Nagler's attack on the sociological theories of prophylaxis is directed, broadly speaking, along two well defined lines; first, the criminal anthropologists and sociologists, for the most part, he claims, are too hazy in their own mind as to the meaning and value of the terms which they employ, and secondly, though there may be some desirable, clear-cut features in their theories, their agitation is rather superfluous because these features have been recognized all along by the classical schools having received all the attention which was possible to give them under the circumstances amidst which the classical penologists labored. These conten-

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tions the author endeavors to prove by submitting to a lengthy analysis the principle of social prophylaxis and its relation to the classical penal law in the light of the latter's evolutionary history.

The notion of social defense has been only rediscovered, or rather re-emphasized by the Italian school of criminal anthropologists; it is much older than the school which grew up around it, being in fact, one of the oldest principles recognized in classical penal law. What characterized the new school was the misplaced emphasis on the defense principle; agitation of the latter narrowed itself down to an avowed attempt to reconstruct the whole penal machinery or society's reaction against anti-social acts on the part of its criminals upon the principle of *difesa* or *tutela sociale* exclusively.

In other words, just as the middle ages saw only the criminal, and as the classical school of penology, reacting against this view, saw only the man, so, the positivist Italian school claimed as its particular merit the discovery of *homo delinquens*, in favor of whose study it proposed to emasculate the whole penal system. Penology is not to concern itself with the deed, but, primarily, with the agent thereof; this is the pivotal center of the new school.

In the course of his introduction Nagler remarks that even on this, its fundamental principle, the new school is far from having reached a harmonious viewpoint. He finds the statements of its adherents about their platform and about what they propose to do rather indefinite and, at times, quite contradictory. At any rate one fails to find the coherence or concreteness which alone could inspire confidence in a program of reconstruction so revolutionary as the one proposed by the criminal anthropologists and sociologists. Even in the very latest important document emanating from this school, the thesis of A. Prins (*La Défense Sociale et les Transformations du Droit Penal*, 1910), presented before the last congress of the International Criminalistic Society, Nagler misses "*die prinzipielle Erfassung der Grundbegriffe*," although the work is concerned chiefly with the fundamental principles of the school. He therefore proceeds to analyze the principle of legal protection against criminal wrongs, after first giving an historical account of the development of the principle of social defense in general. Numerous quotations are introduced from the writings of both schools to show that the theory of protection is really coextensive with the history of legal lore and in no sense a modern discovery.

Special chapters are devoted to an exposition of the difficulties and some of the dangers of protection as a working principle. The more relevant points are emphasized by copious references to the works of the classicists, who alone have had the opportunity of testing their theories in the crucible of actual practice. Finally the author turns his attention to the relations between the principle of prophylaxis against crime and the theory of penal law as it is in force today. In this part of the work, Nagler, broadly speaking, maintains that the classicists do sufficient justice to this fundamental principle of the Sociological school and that to give it greater emphasis under existing circumstances would be to jeopardize the safety of society with chimerical schemes.

The propriety of distinguishing between the principle of protection and that of defense is pointed out. Failure to do so has been the cause of considerable misunderstanding. The French and Italian terms, *défense* and *defesa*, respectively, are frequently given either of the two meanings indiscriminately. This

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is wrong. The act of defense is not one merely of insurance against evil, as implied by the term protection, though the two principles are only different forms through which the same fundamental instinct, survival, manifests itself. Take the German science of penology for instance; from its beginnings in the 16th century, and even earlier, as traces of it appeared in the course of the previous century, it contained the germs of both principles. During the 18th century German penology became contaminated, chiefly through French influences, with the peculiar notions of social prophylaxis which were in the air at that time and which, according to the author's view, remained a foreign body in the midst of the staid foundations of German penology. (P. 20.) The cleansing of the German penal law of this foreign contamination towards the end of the 18th century, the author explains, led to the development of the agitation for prophylaxis as a separate movement and the exigencies of propaganda placed this new agitation in an attitude directly antagonistic to the fundamental penological principles in vogue. This was, he explains, an excess of zeal which neutralized even what chances for good the new movement may have had otherwise. The new agitation seemed satisfied with nothing short of a complete reconstruction of the whole ponderous superstructure of penal law and practice upon the single principle of social prophylaxis. Moreover, the new movement claimed this principle as its own special discovery in spite of the fact that the writings of the older classicists are replete with statements which show that they were fully aware of the need of prophylaxis and of its value as a guiding principle.

The early advocates of the new school, particularly the Italian positivists, proceeding from the naturalistic viewpoint of complete determinism, were led to minimize the value of *Strafrecht* and stake every reaction of society against the anti-social elements in its midst on the principle of *Sicherungsrecht* exclusively. The older penal law recognizes both principles and is unwilling to build upon one to the complete exclusion of the other, like the sociological penologists. This narrowing of the field, the author condemns as unjustified and even dangerous; but he does not deny that the agitation resulted in some good. He states, for instance: "Wie immer man sich zu den Kriminal-Anthropologen stellen mag, jedenfalls haben sie bei aller ihrer Einseitigkeit das grosse Verdienst, den ungepflegten Sicherungsgedanken wieder hervorgezogen und durch energische Betonung zur Geltung zu haben." (p. 31).

Towards the sociological turn which the new movement assumed in France and in Germany the author is equally unsympathetic. He accuses the sociological school of a careless disposition to condemn beforehand everything emanating from the classicists as reactionary and points out in reproachful terms its humble origin from the rather discredited positivistic movement with which he thinks the sociological school has a great deal more in common spiritually than its modern supporters are willing to admit. For one thing, the sociologists fight the classical school after the fashion of the old Italian positivists and very largely with the same weapons. Like the latter in their day, the sociologists are very fond of verbal excesses, gloating in generalities and wild abstractions so that it is frequently impossible to learn their attitude toward certain specific problems. When they do endeavor to particularize, the sociological anthropologists disagree as badly among themselves as with their antagonists. If, instead

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of shooting over their mark and threatening the whole penal system in vogue in the vain ambition to have it rebuilt according to their own fancy, the sociological penologists had been more moderate, it is likely that the reaction which they called forth on the part of the classicists would have been less severe, and their chances for doing good might have been correspondingly enhanced. As it is, by the rashness of their conduct, they have brought about too great a spirit of hostility between the two schools with the result that their agitation has been looked upon with extreme suspicion, their activities counter-checked and largely neutralized.

The theory of the Lyon school, which looks upon the social medium as the real etiologic substratum for crime, has won many adherents; it has been braced bodily by the Socialists, with whose materialistic conception of social relations it is in perfect agreement. The Socialists agree with Lacassagne that "Man makes laws, but the social medium makes the man," and are in complete accord with his statement, made before the first Congress of Criminal Anthropology, that "the social medium is the culture broth for crime; the microbe is the criminal, an element which assumes importance only from the day it meets the broth and causes it to ferment." According to this theory, the penal reforms should be directed towards improving the medium and its conditions of functioning, as has been pointed out at the same congress by the founders of the French sociological school.

The sociological anthropologists proper, that is, those within the ranks of the International Criminological Society, are closely allied to the Lyon school; for, although they endeavor to be more broadly eclectic in their survey of the etiology of crime, they are inclined, like the latter, to over-estimate the role of social conditions. They, too, conduct their campaign under the "war cry" of social defense almost exclusively. The author's criticism of their activity in this connection seems to be that they are not making the best use of their energies. The classicists, so maligned by them, Nagler maintains, are as fully cognizant of the principle of social assurance or protection and its problems as the sociologists themselves. The present volume is devoted largely to the task of proving this very point. The real difference between the sociologists and the classicists, according to the author, is one of difference in emphasis rather than in theory. The latter "value the individual factor of personality more highly; they turn to the 'self' in the first place in their search for the cause of crime; for them the man is more than a mere automaton, subjected to the interplay of surroundings without power of control. They recognize the power of personal will." And he adds (p. 41-2):

"Die sonstigen Faktorengruppen (die physiologischen, psychologischen, sozialen) haben daneben die Bedeutung der Anstösse und Gelegenheiten, die den Menschen in den (vom Verbrecher zu ungunsten der Rechtsordnung gelösten). Interessenkonflikt stürzen; sie sind mithin für die Entwicklung und Formen der Kriminalität noch bedeutsam genug. Folgerichtig suchen die Klassiker die Verbrechensverhütung nicht ausschliesslich, ja nicht einmal in erster Stelle durch die Verbesserung der Umwelts—etc. Faktoren, sondern vor allem in der *moralischen* Stärkung der Gesamtheit."

Our learned author is not everywhere animated by that scientific candor which guarantees thorough freedom of mind. There are passages in this book which betray in him the ardor of partizanship, as when he speaks with con-

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tempt of what does not meet with his approval, instead of allowing the facts in the case to speak for themselves. Frequently he assumes a haughty air and frowns down upon those who antagonize his school in a manner not altogether compatible with the traditional open-mindedness of a truth-seeker. Indeed, not only does the author's self-conceit lead him to over-estimate the work of his own race, but he is specially inclined to speak slightly of the work of other nations.

One example of this may be cited, showing the intemperance of language into which Nagler permits himself to lapse. Speaking of the American reform system "about which so much noise is being made now-a-days," he claims that it has really been built "auf deutscher Gedankenarbeit," a fact which others have failed to observe; he hastens to point this out and does so in the following characteristic manner:

"It (the reform system) has not cropped out of the heads of Sanborns, E. C. Wines and Brockway, but has been merely advanced by them into practical shape along the lines of the German improvement-idealism."

With greater justice could an Athenian, equally hide-bound, claim that Darwin has done no more than "weitergeführt" (this being the expression the author uses) the notions of the Greek philosophers on antiquity. Did not Heraclitus proclaim that everything in nature is in a state of perpetual change? And did not Empedocles advance the even more startling principle that the living world is made up of incomplete products and is continuously subjected to the process of change and selection through adaptation? The germ of many another modern theory may be traced back to Greek thought, yet it would be as ridiculous to claim that they emanated from it as is our writer's contention in the present instance. He states further: (p. 248-9.)

"Instead of referring to the imported article suited to American conditions, its admirers might turn more profitably to the German models of the 19th century. Here, in Germany, where we have witnessed the breakdown of our efforts at improvement, it has come about that we have become superstitious about the same system in a foreign dress. The favorable opinions of the Americans, upon which so much confidence is placed in the matter, is not worth much."

It is in very much the same spirit that the author examines the sociological viewpoints of penology, only to reject them on the score that much of it is not new when compared with what has been said or done in classical penology; and what is new appears to Nagler too vague, untrustworthy, even pernicious. The author's bombastic conclusion, in the last chapter of his work, is also characteristic: (p. 263-264).

"Conscious of its own worth and of the solid foundation it has gained through experience, the classicists refuse to turn their science into a servile handmaid of some foreign discipline, 'auch (nicht) der nachgerade zum Unfehlbarkeitsbewusstsein emporgestiegenen Naturwissenschaften zu erniedrigen'; they obey no foreign dictatorship, but want to remain masters over their own domain, which gives and takes its scientific exchange with foreign lines of research, according to its own needs for further development."

Clark University.

J. S. VAN TESLAAR.

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LA RESPONSABILITE DE LA PUISSANCE PUBLIQUE. By *Rene Marco*. Ferdinand Larcier, Brussels, 1911. Pp. 443; price, 6 fr.

This is a general treatise on the responsibility of the sovereign power of a state and of its agents as it exists in Belgian jurisprudence. The subject is considered in three parts. The first two hundred and twenty-five pages are devoted to a discussion of the responsibility of the state as it exists in Belgian law. the legal principles involved are examined in the light of both the constitutional provisions and the judicial decision bearing on them. The second portion of the book—one hundred and thirty-seven pages—is devoted to the fundamental, theoretical problems in connection with the responsibility of public authority. An exposition and criticism of the doctrines of an irresponsible and a responsible public power is made and the effect of these two doctrines on Belgian jurisprudence is analyzed. The final division of the book—eighty pages—is devoted to the equality of the burdens and the responsibility of public power.

In the first division of the work, thirty pages are devoted to a consideration of the administrative problems involved in maintaining order within a state or municipality itself, as well as of the problems involved in connection with penal servitude. In keeping with the purpose of the work, this is a theoretical discussion of the legal principles existing in Belgian jurisprudence, setting forth the scope and limitation of the power of the state or municipality in coercing its citizens, and the right and grounds of the individual to proceed against public authority. The work is purely a legal treatment and does not pretend to touch any of the sociological problems connected with the subjects of crime and criminology. It will be of service only to those interested in the fundamental legal principles involved in the limitation of public power and particularly as this limitation exists in Belgian law.

Northwestern University.

F. S. DEIBLER.

UNA DISPOSIZIONE POCO NOTA DEL DIRITTO PROCESSUALE PENALE ITALIANO (L'Art. 184 Cod. Proc. Pen.) By *Marcello Finzi*. Societa Editrice Libreria, Milan, 1911. Pp. 41.

Section 184 of the Italian Penal Procedure Act may be translated as follows:

"The judge who holds to bail any one charged with a crime, can when the circumstances demand it, at that time or subsequently until trial, order the accused to remain away from a definite locality, under pain of the conversion of the bail into a commitment."

Marcello Finzi has written a microscopic thesis on this statute, treating it from every point of view, with a thoroughness, which seems to the reviewer, unnecessarily painstaking. His object is to have the section revised. His revision would extend its scope and state categorically what seems to us to be included in the section as enacted. This extension is bad, the addition of procedural details unnecessary. It would allow the judge to admit to bail subject to "limitations of residence or other restrictions of personal liberty." It would provide for change of restrictions, for notice to the police, for enforcement. The right to alter the order is, of course, inherent in the existing law, as it can be revoked at any time. There is no doubt of this, as Finzi admits. The wisdom of allowing the judges to make a conditional bail, restricting a man's liberty in any way seems unwise. He can always revoke the bail, and the legislative

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result of a power to fix conditions, would of necessity give him the practical power to force the accused to accept these condition, where if the only alternatives were commitment or bail, the accused would not hesitate between them. And, in fact, with conditions specifically allowed, the accused would be forced to accept burdensome conditions where an appeal to admit to bail would be under the present procedure. This would be the practical result. The wisdom of allowing the judge to admit an accused to bail, restraining him from frequenting the scenes of his criminal activity is, however, undoubted. It is not a device to impose sentence without trial as the power to impose any restrictions on personal liberty would be. Furthermore, public security seems to demand it in these days of clemency when it is hard to hold without bail.

Finzi's proposed section goes further, however, and approaches an indeterminate sentence act. Such a law should, of course, be clearly stated and not hidden in a procedural clause affecting to bail. It seems to us, furthermore, that the existing section, by necessary cross-reference to sections governing the admission to unconditional bail is clear as to procedural details. Finzi's examination of the acts accompanying the judge's order, his power, the cases in which it may be exercised is minute. It seems that he proves that the existing section fulfills the duty demanded of it.

The wisdom of such a provision is undeniable. It is self-apparent. Similar statutes have existed in the Italian states since 1786, when Tuscany led the way followed by the Kingdom of the two Sicilies in 1819 and Parma in 1820. Strange to say, no similar law can be found in Germany or England. In the United States, it has been unknown, though the municipal police often enforced such regulations. It only remains to be added that the adoption of such a provision would materially benefit the control of our criminal population in great cities by removing many semi-criminals of weak character from temptation at the time when they are most prone to fall lower in the social order; i. e. when there is a charge hanging over them. And it would do this, too, without incarceration, which, all hold, exerts a pernicious influence on character.

Philadelphia.

JOHN LISLE.

DIE STRAFVOLLSTRECKUNG in den bayerischen Gerichtsgefängnissen und Strafanstalten. By R. Degen, K. Landgerichtsrat, and Dr. O. Klimmer, K. Amtsrichter, im Bayer. Justizministerium. Munich and Berlin: J. Schweitzer Verlag (Arthur Sellier), 1911. Pp. 379.

On first impression, a more solemn, a more withering, and a more unemotional duty could not be imagined, than the labor of reviewing a collection of penological proclamations, decrees, statutes, and ordinances. The effort of mastering an original Chinese chrestomathy, in comparison, might spread a radiant intellectual glow; but, as there is a hidden poetry in the Euclidean geometry, so here one may expect to find, concealed under a dry integument, a stirring human interest. "Once the step-child of legal science, and a *terra incognita* of judges and public prosecutors, the special department of prison knowledge has gradually disclosed scientific treatment, and attained a deserved position." (P. 177.)

"Within the last ten years there has been effected a thorough re-organization of the penal establishments of Bavaria. Older prisons which have proved

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insufficient to meet the demands of the present day in the matter of punishment have been abandoned and new ones based on the modern science of penology have taken their place. Hand in hand with this change, a new unified administration has been substituted for the antiquated prison methods which had prevailed, and the cell system of Nuremberg. Finally, in conformity with the thought of a progressive age, and in the attainment of a desired uniformity in the matter of penal execution, the earlier administration for jails has been replaced by a new system. The provisions relating to penal execution as against the liberty of the offender in Bavaria follow the lines of the so-called principles of the *Bundesrat*. They utilize, however, the practical information derived in the last decade in the field of prison science, laying emphasis on the education and betterment of the prisoner and the prevention of recidivation, and thus serve the important social mission which has come to be recognized as involved in the form of penal execution." Thus the preface.

This work is, as already suggested, a compilation of the existing prescriptions governing prison discipline in Bavaria supplemented by exhaustive explanatory notes, or, in the condensed form of expression of the Germans, a *Handausgabe*. It is in four principal divisions: proclamation regarding the administration of prisons for lighter offenses, including civil prisoners, etc. (*Gerichtsgefängnisse*); ordinance governing the administration of prisons for more serious offenses (*Strafanstalten*); rules governing admission of prisoners to penitentiaries, etc.; and provisional release of prisoners (*vorläufige Entlassung*). An appendix follows, consisting of sixteen separate ordinances, proclamations, and collections of excerpted statutes upon which the above administrative regulations are based. It may be remarked here that these regulations are State supplements, principally to the Imperial Criminal Code of May 15th, 1871, and the Imperial Code of Criminal Procedure of February 1st, 1877. Both of these Codes are likely soon to be replaced by new legislative drafts which are now under consideration. The German mind is always fundamental (*Gründlich*) and before it undertakes a practical labor it demands a full exposition of the underlying reasons, limitations, and justifications of the thing to be accomplished. Dr. Angell in his recent reminiscences tells us of a German who was writing of the history of the chimneys of a German city. He began with Greece and Rome, and after a long discussion of his subject, concluded that neither Greeks nor Romans had chimneys. But in this case there is as yet lacking an imperial statute relating to penal execution. In 1879 a draft of such a statute was submitted to the *Bundesrat* but it did not reach the *Reichstag*. The *Bundesrat* did, however, concur in a decree of October 28th, 1879, fixing certain important general principles for the punishment of offenders as a temporary expedient. (Pp. 177, 319.)

What is likely to impress a reader of this book in this country, familiar with the proposition that the bulk of our law is judge-made, is the legislative skill displayed—the art of legislative expression. We have as much to learn here of the Germans as in the domain of ideas. It may be safely surmised that work of this kind is done by experts, and not by men whose principal occupation is cab-driving or doing odd jobs in county offices. Although there is wanting a complete imperial governing act, the State of Bavaria has been able to work out a remarkably consistent, progressive, and comprehensive set

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of rules regulating prison punishments. Refinement of classification is one of the marks of a developed science, and classification is simply consciously applied discrimination in separating the essential differences in a subject matter. At an early day crime was crime, and it was not apparent that there might be a wide range of offenses differing in their degree of danger to society, much less calling for a difference of treatment as to the offender. The Bavarian system has pushed the analysis of punishment to the last degree. There is not only a thorough-going classification of the kinds of offenders, the kind of prisons, and the classes of punishments, worked out in a method of detail that goes far enough, and yet not too far; but it is expressly provided that "the objects of punishment cannot be attained unless all the personal qualities of the prisoner are taken into account." The house regulations, however, are as rigorous and precise as a military manual—a species of legislative detail neither workable nor desirable in any other department of the law. Thus, for example: "the bed-clothing shall be changed every month;" juvenile offenders are addressed as "*Du*" and others as "*Sie*"; every prisoner shall have a bath "at least once a month"; certain prisoners may once a day have a half-litre of beer or (foot-note) milk.

These regulations may be summarized as the practical application of the syncretic theory of punishment represented by von Liszt. They regard the social aspects of crime and are governed by an enlightened humanitarian principle; not a false humanity that puts all blame upon society and coddles the offender, but a principle which recognizes that criminal punishment should inflict a distinct evil on the man who opposes the commands of the State. The retributive feature is not abandoned, but combined with measures for the offender's social re-establishment, and based on the practice of the individualization of punishment, especially as to young prisoners. As representing a late working solution of a world-wide and enduring problem, by a first-rate government, this book probably will be of interest and value to all prison administrators.

ALBERT KOCOUREK.

Chicago.

VERBRECHERSPUR UND POLIZEIHUND. By *Dr. Friedo Schmidt*. J. Pfeiffer, Augsburg, 1910, pp. 81.

This book has been written from a thoroughly practical point of view. The history and the physiology of the dog and his general function in the field of criminology have been clearly and adequately treated by the author in a dozen pages. In the body of the book Dr. Schmidt considers in detail, but from a practical point of view, the nature of the odors from the human body, their transmission from the palm of the hand and the sole of the foot, and the production and the dissemination of the odors of the feet in walking. The criminal leaves more traces of his bodily odors behind him because he very frequently suffers from excessive perspiration, due to great muscular activity, mental disquietude and indulgence in alcoholic liquor. The chemistry and the physics of odors are carefully treated in great detail, but with such practical illustrations as to make the chapter readily intelligible to the police officer.

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The criminal may attempt to defeat the efforts of the police dog by offering the dog poisoned food, by distracting his attention by the use of a bitch, by neutralizing the characteristic bodily odors by the use of chemicals, by careful washing of the feet, and by the use of a perfume which is distasteful to the dog. None of these expedients will defeat a well-trained police dog. Even the use of perfume does not deter the dog from following the scent, and the dog is still able to detect the bodily odor of the criminal in spite of the perfume. The effect of the use of rubber shoes, of new shoes, of the shoes of another, of bicycles, and of other vehicles by criminals is also carefully described, with many illustrations from practical experiments. The proper care and feeding of police dogs and the proper care of clues and substances left by the criminal are also discussed.

At the end of the book, Dr. Schmidt enumerates fifty of the more important conclusions which he has reached regarding the value of the police dog. These conclusions summarize in an admirable manner the latest conclusions of criminologists regarding the police dog and its proper functions and activities.

New York City.

LEONHARD FELIX FULD.

Journal of the American Institute of Criminal Law and Criminology

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Subscriptions and business correspondence should be addressed to the Managing Director, Northwestern University Building, 31 W. Lake Street, Chicago, Ill.

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CONTRIBUTORS TO THIS NUMBER

Edwin M. Borchard, of the New York bar, is a graduate of Columbia University. His law work was done at the New York and Columbia Law Schools. His post-graduate work in Comparative and International Law was completed also at Columbia University. In 1910 he was appointed Expert in International Law to the American Agency in the North Atlantic Coast Fisheries Arbitration at The Hague, after which service he made a trip through the countries of Western Europe in the interests of the Law Division of the Library of Congress. For the last two years he has been the Law Librarian of Congress and the Supreme Court at Washington. He is the author of a "Guide to the Law of Germany" (1912), "Coastal Waters" (1910), and of a number of shorter monographs. He is the American editor of the *Bibliography of Legal Science*, published at Berlin, and a frequent contributor to American and European legal periodicals on topics in comparative and international law.

Edwin R. Keedy is Professor of Law at Northwestern University. He is a graduate of Franklin and Marshall College and the Harvard Law School. He was the first Secretary of the American Institute of Criminal Law and Criminology, and is now the Secretary of the American branch of the International Union of Criminal Law. He was a member of the commission which investigated and reported upon the criminal procedure of England, and is the author of a number of articles on criminal law and procedure.

Julius Ludwig Goebel, Jr., graduated from the University of Illinois with the class of 1912 and is now a graduate student in the same institution. Mr. Goebel's article is an extract from his paper which was awarded one of the Harris Political Science prizes in 1911.

Walter T. Dunmore, A. B., Oberlin College, 1900; A. M. 1904, LL.B. Law School, Western Reserve University, 1904. Since his graduation from law school, Mr. Dunmore has been teaching the courses in Property and Evidence in the Law School of Western Reserve University. He was made Dean of that Law School in 1910 and under his administration the school has so raised its requirements that only graduates of approved colleges are admitted. Mr. Dunmore is the author of a book on Ship Subsidies and has contributed a number of articles to legal periodicals.

EDITORIALS.

THE BILL TO MAKE COMPENSATION TO PERSONS ERRONEOUSLY CONVICTED OF CRIME.

The state is apt to be indifferent and heartless when its own wrongdoings and blunders are to be redressed. The reason lies partly in the difficulties of providing proper machinery, and partly in the principle that individual sacrifices must often be borne for the public good. Nevertheless, one glaring instance of such heartlessness, not excusable on any grounds, is the state's failure to make compensation to those who have been erroneously condemned for crime.

There is plenty of analogy for such a measure. The Federal Court of Claims is a standing example of the general maxim that the state should fulfil its obligations and redress its wrongs by judicial inquiry and award. And a particular analogy here is found in the constitutional principle that compensation should be made for property taken for public purposes. To deprive a man of liberty, put him to heavy expense in defending himself and to cut off his power to earn a living, perhaps also to exact a money fine,—these are sacrifices which the state imposes on him for the public purpose of punishing crime. And when it is found that he incurred these sacrifices through no demerit of his own, that he was innocent, then should not the state at least compensate him, so far as money can do so?

Why has the principle never been here applied? Because we have persisted in the self-deceiving assumption that only guilty persons are convicted. We have been ashamed to put into our code of justice any law which *per se* admits that our justice may err. But let us be realists. Let us confess that of course it may and does err occasionally. And when the occasion is plainly seen, let us complete our justice by awarding compensation. This measure must appeal to all our instincts of manhood as the only honorable course, the least that we can do. To ignore such a claim is to make shameful an error which before was pardonable.

To disentangle the subject from prejudice, let us distinguish three different kinds of cases: (1) cases where an officer of justice is legally liable; (2) cases where the innocent man's sacrifice extends only up to his acquittal; (3) cases where it extends to and beyond his conviction.

(1). *Wrongs by officers* are now taken care of by the law. If the officer is insolvent, there is practically no redress, and the state might

COMPENSATION TO PERSONS ERRONEOUSLY CONVICTED

therefore be asked to compensate. We leave aside this question; it is for the far future.

(2). *Wrongs done by the state preceding an acquittal* include the loss of personal liberty, the loss of income, the loss of reputation and the expense, incurred by one who is later acquitted. Now it is clear that the state must arrest and try *all* duly accused persons, though it is certain that a large proportion will be found innocent. The innocent man has here made a sacrifice for the public good. There is no redress against the officers; they have faithfully kept to their duty under the law. The public good has gained quite as much as it would have done when commerce was served by a railroad placed on land taken by force from that same man. Why should not the sacrifice be compensated? In a civil case, at least costs are given against the unsuccessful litigant. Why should not the state allow costs against itself? Perhaps the amount of the expense bill would look too great. This may be a practical deterrent. But let us at least admit the principle and go on to the third class of cases.

(3). *Wrongs done by the state through erroneous conviction* are so much rarer than the preceding class that the expense of doing justice need here not be deterrent. And this wrong, when it does happen, is so much more grievous that it stands by itself in its appeal to our sense of injustice. Moreover, the moral effect of such an unredressed wrong is so bad that we can afford to make special effort to prevent it. A few cases of this kind stand in our annals as perpetual blood marks and do more to weaken the cause of law and order than a thousand unjust acquittals. The case of Lesurques, in France, just before the Revolution—a victim of mistaken identity—is chronicled in every book on circumstantial evidence. The case of Adolph Beck, in England only a few years ago, has done much to undermine the profound faith of the English people in their courts and their police. How much better if the law provided frankly beforehand for redress in such contingencies. Would not this at least restore our faith that justice would ultimately be done? In both those notable cases the government made a donation by way of expiation—in Beck's case, the sum of £5,000. But to leave such expiation to the whims or the sympathy of a busy political officer, and to the chances of persistent intrigues by the friends of the victim, is unworthy of an enlightened community. And in our own country it was left to the beneficence of a private citizen (Andrew Carnegie) to do something for Toth, the latest victim of justice's errors, who lay for twenty years in a Pennsylvania prison, convicted of a crime which he never committed.

TREATMENT OF THE DEGENERATE CRIMINAL

Why should we not provide for such grievous errors of justice? Almost every continental nation has done something substantial during the last hundred years to correct this defect in the law. Shall we lag behind any longer?

It is nobody's interest, apparently, to move for such a law. You and I have never suffered in that way; no large business interest is threatened; no class of persons directly feel a loss in their pockets; and so nobody exerts himself. Only the casual victims feel the wrong, and to expect them to unite in a demand for legislation is absurd.

Mr. Borchard's article in this number of the JOURNAL ought to appeal to every citizen of the land and particularly to every legislator. He sets forth what has been done on the continent and points out the entire feasibility of the measure. We ask for its earnest consideration.

Mr. Borchard has drafted a bill, which is printed in this issue at page 792 ff. It has already been introduced into Congress. By this bill the court of claims is given jurisdiction of such cases arising under Federal jurisdiction. The bill can be easily adopted for the same purpose in state courts for state cases. We trust that the movement for this amendment of our law will spread and that it will be taken up by the Institute of Criminal Law and Criminology.

J. H. WIGMORE.

THE TREATMENT OF THE DEGENERATE CRIMINAL.

A most important forward movement in Criminology waits upon a serious, concerted effort at the permanent segregation of dangerous degenerates.

In number 6, Volume II of this JOURNAL, at page 819, under the title "The Degenerate at Large," the writer called attention to a distressing murder that had been committed by an ex-convict who had previously served a number of terms in the penitentiary but without effect as far as checking a criminal career was concerned. He was apparently a hopeless degenerate. The point was urged in that place, as others have done time and again elsewhere, that every such character, regardless of his offense, should be permanently separated from normal society.

To this, no doubt, every man of sound common sense will give his assent. If Schrank, the would-be assassin of Mr. Roosevelt, is, as the experts declare, a chronic paranoiac, his being brought so expeditiously under a plan for permanently shutting him off from normal association with other men is a perfect illustration of the practical operation of one

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twentieth century ideal in criminology. It would be a crime ever again to allow him the freedom of the state, and thus to expose the innocent to his violence and even to the possibility of murderous assault.

It is a great service to the state to segregate the degenerate who has already proven himself a menace. It is a greater benefaction, however, to bestow upon society a method, or methods by which the various types of degenerates may be distinguished before they have practically demonstrated their character by encroaching upon the liberties of others.

The making of these distinctions must be the burden of men of science who are trained in methods of research. Such men must be provided with the means for rendering their peculiar service. We are indebted to Mr. Arthur MacDonald of Washington for agitating throughout many years the establishment of criminological laboratories by municipal, state, and national governments. It is understood that his bill providing for the establishment of a national laboratory is now pending before the judiciary committee in each house of Congress. Two years ago Mr. MacDonald presented his plans to European governments. The director of the Belgian laboratory at Forest acknowledges indebtedness to him and more recently even Russia has created an institution for research on the general lines suggested by Mr. MacDonald.

Happily the movement is more widely spread. In many institutions in our own country it is under way. The latest development is the department of biochemical research at Vineland, New Jersey, in connection with the Training School for the Feeble-minded. It is not, therefore, the enterprise of criminologists primarily, but, no doubt, it lends itself readily to their needs. It opens up a wide field of inquiry into the chemical nature of metabolism in those abnormal individuals in whom no organic lesions are discoverable. This, Dr. Southard suggested at the meeting of the American Psychological Association in Washington in December, 1911, is a quarry that is full of promise to science.

In an age when so much is said of efficiency and when men of affairs in public and in private life are zealous to spend freely in order that they may develop and disseminate scientific knowledge concerning production of plants and animals for commercial reasons, it is anomalous that at the same time we are niggardly in the matter of spending for the development of scientific elimination of social, which is at the same time economic, waste. It narrows down to the question—what are we willing to spend in the form of effort and money to increase and disseminate knowledge concerning crime and to stop its drafts upon the

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public purse and peace? There are the epileptic criminals and their terrific cost to society in both blood and treasure so admirably set forth by Dr. Healy in his recent report from the Psychopathic Institute in Chicago. What is being done to develop reliable information concerning them and to let the public, even the thinking public, know how large a percentage of repeated offenders are epileptics and consequently incurable and always, therefore, unsafe when at large in the community? To this class belong no less than $7\frac{1}{2}$ per cent of 1000 repeated juvenile offenders who have been studied by Dr. Healy and his associates in Chicago.

It is because of a lack of an awakened public sentiment and consequently for want of public support that information, such as it is, upon these points reaches the public only through the daily press. The rare investigator in criminology understands how meager and spectacular, rather than complete and reliable, this general information concerning criminals continues to be. Meantime, owing to public ignorance and to its corollary, the paucity of means at the disposal of our institutions for discriminating and segregating the epileptic and other degenerates from the normal criminal and normal life, we go merrily on our way apprehending and, in due course, releasing degenerates at the peril of our lives and social stability. Or if we do not thus release them we do what may be even worse: we confine them where they contaminate others, and thus indirectly continue to be a burden upon society. Again, in silly though less tragic fashion, we plunge headlong through tedious expensive processes of law in prosecution and defense of an accused, perhaps even after the question of the moral responsibility of the defendant has been raised. Would it not be far saner, universally, in such cases, to submit the problem to experts, outside the pale of the court, who are competent to pass upon a question, lying definitely, as this does, within the science of psycho- or neuro-pathology? Such a course would seem to be in the interest of expeditious, economical, and otherwise fair dealing with one who proves to be an irresponsible degenerate.

Our national and state governments should not be behind other nations in increasing and disseminating knowledge concerning crime, including criminal statistics, and in providing our institutions with ample means for distinguishing degenerates and properly segregating them. Professor Garner's editorial on "Homicides in American Cities" and Mr. Goebel's article on the "Prevalence of Crime in the United States," both in this issue, should be ample encouragement to take up the burden.

ROBERT H. GAULT.

POLICE REORGANIZATION IN CHICAGO.

There is pending in the City Council of Chicago a bill* presented by a sub-committee of the Council Committee on Schools, Fire, Police and Civil Service. The bill is based upon the report of the investigation of police by the Civil Service Commission and an independent investigation of the sub-committee and may be found in full in the JOURNAL of the Proceedings of the City Council of the City of Chicago, November 25, 1912, pp. 2415-2433. The most noteworthy features of the proposed act are the following sections:

Section 6 (first two paragraphs). "There are hereby created the offices of Superintendent of Police, First Deputy Superintendent of Police, Department Inspector, Director of Instruction, Inspector of Moral Conditions and such number of captains, lieutenants, sergeants and patrolmen as may, from time to time, be provided for in the annual appropriation ordinance. The following members of the department, to-wit: the First Deputy Superintendent of Police and all captains, lieutenants, sergeants and patrolmen, shall be known and are hereby designated as 'policemen,' and shall constitute the police force of the City of Chicago.

"In addition the department shall include such other employees as may, from time to time, be provided for in the annual appropriation ordinance."

Section 9. "The Second Deputy Superintendent of Police shall not be a member of the police force, and under the direction of the Superintendent of Police shall be charged with:

1. The care and custody of city property and the distribution of the same.
2. The supervision of departmental records.
3. The inspection of the personnel of the department and of stations, equipment and departmental property.
4. The instructions of officers and men.
5. The ascertaining and recording of departmental efficiency, individual and grouped.
6. The receipt and investigation of all complaints of citizens regarding members of the police force.
7. The supervision of all matters affecting public morals, such as prostitution, the sale of cocaine, opium and other habit-forming drugs; the supervision of saloons, cafes, restaurants, hotels, public dance halls, summer parks and excursion boats.
8. The censoring of moving pictures and performances of all kinds. To him will report:
 - (a) The Secretary of the Department.
 - (b) The Manager of Properties.
 - (c) The Department Inspector.

Section 12. All precinct commanders shall keep in their respective stations a card index system furnished by the Second Deputy Superintendent of Police, which will show, at all times, up to date, the name, description, character, haunts, habits, associates and relatives of every known person of bad character residing in or frequenting such precinct, including pickpockets, hold-up men, safeblowers, confidence men, vagrants, pimps, prostitutes, and people who are operating or have operated gambling houses.

Section 19. No member of the police force shall be assigned to any duty other than that strictly in line of police work, and it is hereby made the duty of

*This bill, with few substantial amendments, was passed by the Chicago City Council since the JOURNAL went to press and will probably be signed by the Mayor. At the behest of the United Societies all parts of the act tending to enforce the state law closing saloons on Sunday were eliminated and the inspection provided for in Section 26 was made the duty of the Inspector of Moral Conditions.

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the Superintendent of Police to return to uniformed service as promptly as possible, and within six months after the passage of this ordinance, all members of the police force not hereinabove designated for duty in citizen's dress.

Section 23. The Department Inspector shall have charge of the Inspection Division, and, under the direction of the Second Deputy Superintendent of Police shall be charged with the instruction of the officers and members of the department, and to that end shall establish such courses of instruction at station schools as may be approved by the Second Deputy Superintendent of Police.

Section 24. It shall be the duty of the Department Inspector under the direction of the Second Deputy Superintendent of Police to establish and maintain a school of instruction for recruits to the position of patrolman, at such place as the Superintendent of Police may designate. All such recruits shall upon their appointment be ordered to the school of instruction in numbers convenient for their practical instruction, and shall there be instructed in elementary criminal law, city ordinances, pertaining to the Police Department, the rules and regulations of the department, sanitation, first aid to the injured, military drill, revolver practice, court procedure and such other matters as the Second Deputy Superintendent of Police may direct. Such course of instruction shall be not less than thirty days' duration, except in cases of emergency, and in such case the full period of instruction shall be completed after the emergency has ceased. No probationary patrolman shall be appointed a regular unless he shall have passed a satisfactory test at the school of instruction for recruits.

Section 26. It shall be the duty of the Department Inspector to make periodical inspection and investigation of all saloons, cafes, restaurants, public dance halls, summer parks, excursion boats, and hotels within the City of Chicago, and report thereon to the Second Deputy Superintendent of Police any violations therein of the laws of the State of Illinois, ordinances of the City of Chicago, and the rules and regulations of the Department of Police, and it shall be the duty of the Second Deputy Superintendent of Police to forward such reports, with his recommendations thereon, to the Superintendent of Police.

Section 30. It shall be the duty of the Second Deputy Superintendent of Police to install and at all times maintain a system for the ascertaining and recording of individual efficiency of each member of the police force under the rank of Deputy Superintendent of Police. Such system shall be as nearly automatic as possible and its application shall be uniform throughout the department."

Section I provides for the appointment of a Superintendent of Police by the Mayor, with the advice and consent of the City Council.

As long as the head of the police system is appointed by the Mayor there can be no satisfactory police administration. No matter how efficient the Superintendent may be if he is appointed by the Mayor he is subject to political influences that if he would hold his position he cannot evade and the usual result is that after a period of time, public clamor forces his retirement and the power that appointed him permits him, broken and disgraced, to be retired. In other words the head of the police department when appointed by the chief executive of any city is usually the scape goat of the administration. No officer who cares for his reputation or who desires to remain permanently in police service can afford to accept the position of Superintendent under such conditions, and it may well be doubted that, even if the Mayor should desire to appoint the most efficient member of the force to the position of superintendent he could induce him to accept.

It is to be regretted that the bill does not provide for some method

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for the selection of superintendent that would allow that officer a free hand, that would make him rightly responsible for the enforcement of all laws and ordinances and insure his continuance in office so long as he properly performed his duties. It is an absurd law that requires a superintendent to enforce "all state laws, city ordinances, etc.," and at the same time under the terms of his appointment practically forces him to consult the mayor or the mayor's advisers as to *which* laws shall be enforced.

Section V, providing that the superintendent "shall enforce all state laws, city ordinances and the orders of the City Council and the Mayor of Chicago" caused the bill to be referred back to the committee at one stage of its passage because of an objection by a representative of the United Societies that this section contained a "joker" that was intended to force the closing of the saloons in Chicago on Sunday, there being a state law requiring saloons to be closed on that day. Perhaps this incident discloses better than anything else the influences surrounding the police organization in Chicago today and the lethargic condition of the citizens of that city. It seems hardly credible that any sober person would have the effrontery to oppose publicly a city ordinance on the ground that it might operate to enforce the state laws, provided that city should sometime commit the error of electing an executive who should not deem himself wiser than his fellows and greater than their law, and should, therefore, endeavor to fulfill his oath of office and therefore endeavor to enforce all the laws. It is more incredible that such an argument should be effective as it was in this case. Still, we sometimes wonder why in municipalities like Chicago so many of its citizens have no respect for its laws.

The notable features of section 6 are the creation of the offices of Second Deputy Superintendent, Director of Instruction, and Inspector of Moral Conditions. (This is the only section of the act mentioning the last two officers.)

The office and duties of the Second Deputy Superintendent of Police are described in section 9.

It will be noted that this officer shall not be a member of the police force and that among other duties he shall have charge of the instruction of officers and men; the ascertaining and recording of departmental efficiency upon which promotion shall be based and the supervision of departmental records. This section seems admirable and if the choice of a second deputy could be based upon qualifications for the peculiar duties of the position instead of political expediency the officer in charge of the department could be of much real service in improving the work of the entire force. The fact that he must be taken from out-

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side the force is particularly commendable, if for no other reasons than that given by the committee that "it is too much to expect a man whose lifelong training has been in active police work to be qualified to handle the business affairs of a department" and because it would be well to have an officer in the organization who has not been reared in the subtle and indescribable atmosphere surrounding the patrolman from the instant he becomes a member of the force—an atmosphere that tends to create even in every honest member of the force a feeling of uncertainty as to his tenure because of unseen and unknown powers, powers that issue no orders but that provide certain punishment for any act or word contrary to its interests, whether the member commits the act in enforcing the law or in violation of it.

It was this section of the act, however, that is reported to have called forth the special opposition of the present chief and the following comment: "It is a big joke—that ordinance. Why, what does the smartest lawyer or judge or business man know about police work? Think of putting a civilian in to run coppers. That is just what you could expect from a lot of wise guys." Perhaps if the classes alluded to did know a little more about "police work" the community would profit and there would be many and rapid changes in the personnel of the police force in many municipalities. At any rate Chicago's chief should be more generous and instead of desiring to prohibit forever the rise of some ambitious citizen unto the eminence and knowledge of a police official he should further such conditions and offer to instruct the novice in the intricacies of "police work."

Section 12 is designed to supplement the card index vagrancy records, and if the system provided for in this section should be carefully and thoroughly followed it would be of considerable benefit in all attempts to locate vicious characters suspected of some criminal act.

Section 19 is intended to provide that a larger proportion of the police force shall be devoted to actual police duty, and that more men shall serve as patrols on the theory that the prevention of crime is more important than the detection of the criminal. The committee found that in 1912 there was appropriated for salaries of sergeants and patrolmen \$5,683,500, providing for 389 sergeants and 4000 patrolmen; that of this number 600 were assigned to the detective bureau of men traveling in citizens' dress out of precinct stations, 1200 on different sorts of special duty, 300 on crossing duty, 350 on wagons and ambulances and *about* 1800 traveling beat in uniform. To the laymen it would seem that this section is needed in the operation of the Chicago force this winter.

Sections 23 and 24 provide for schools of instruction for officers,

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members and recruits by the department inspector under the direction of the second deputy superintendent. These are two commendable sections and if they become law should tend greatly to increase the efficiency of the force.

All larger European cities require attendance at schools of instruction for longer periods than are provided in this section and in some instances high standing in a school of instruction constitutes credit toward promotion. The tendency has been in this country to train police along physical lines and while this is necessary it should not be to the exclusion of mental training. German police commissioners are required to have completed a gymnasium course (equivalent to about two years in college in this country); three years in the study of law; two to have been two years at work under some higher court; and to have exercised during two years some administrative authority. The patrolmen are usually recruited from the ranks of privates in the army, and the officers of the grade of sergeant have generally been non-commissioned army officers with twelve years' experience. Under our system of government this may not be necessary or desirable, but it is high time we had some other qualification than waist dimension or strength of arm.

Section 26 provides compulsory inspection of saloons, cafes, public dance halls and excursion boats, all of which, judging from reports of private organizations, are sadly in need of police inspection. Whether such inspection would lead to proper regulation or not it would place conditions before the public in the form of the reports of the department inspector. To this section, however, should be added "hotels and rooming houses" as places subject to inspection and then the section assigned to the newly created inspector of moral conditions for enforcement.

Section 30 provides for recording individual efficiency and if used as a basis of promotion is good. It does not, however, enter sufficiently into detail and might operate harmfully under an inefficient second deputy.

The bill on the whole is a step forward in the improvement of the police organization of a large city. The chief opposition to its enactment lies in the active opposition of the United Police, an organization of ill repute, and the United Societies, a body alleged to be composed of foreign-born citizens organized to promote the enactment of "liberal" laws and the non-enforcement of those deemed not "liberal," but apparently organized primarily to prevent the enforcement of state laws regulating the sale of intoxicating liquors, and to secure political preferment for the more clever of its officers. Possibly the character of the opposition is sufficient to warrant the passage of the act.

FREDERIC B. CROSSLEY.

HOMICIDE IN AMERICAN CITIES

THE PARDON OF ALBERT T. PATRICK.

Albert T. Patrick some twelve years ago was brought to trial in New York for the premeditated murder of an old man, William Marsh Rice, his benefactor. The evidence tended to show that the purpose of the murder was to enrich the murderer by obtaining possession of the estate of his victim by means of a forged will. Patrick, himself a shrewd lawyer, had the benefit of unlimited financial resources at his trial through the assistance of relatives of means. The jury trying the case was one of exceptional intelligence and after a protracted trial found Patrick guilty. He was sentenced to be electrocuted. Then began the enactment of the usual series of appeals in such cases that tend to bring the whole system of administration of criminal law into general disrepute. The motion for a new trial was submitted in a brief of several hundred pages and embraced all the points which human ingenuity could invent, yet after long argument and deliberation the motion was denied and on appeal to the highest tribunal in the state the conviction was affirmed.

The sentence of death was later commuted to one of life imprisonment and later two governors refused further clemency.

In the face of these facts Governor Dix, after a secret hearing at which there were present pleaders whose identity the Governor declines to disclose, issued a full pardon to Patrick and in his announcement of the pardon states that *after his release* he hopes Patrick will demonstrate *his innocence*.

This act of Governor Dix, while one of the most striking abuses of executive clemency in recent times and an example to the entire country of the failure of the law to work justice, will have served a good purpose if it causes legislation doing away with the power of any executive, after a secret hearing, to set aside the decision of an established court of law, and removing wholly from pardoning power any criminal sentenced to life imprisonment, requiring that such cases must be brought before a pardoning board at an open hearing on newly discovered evidence and limiting the power of such board to an order for a new trial.

FREDERIC B. CROSSLEY.

HOMICIDE IN AMERICAN CITIES.

Mr. F. L. Hoffman, statistician for the Prudential Insurance Company, in a recent number of the *Spectator*, a New York insurance journal, analyzed the homicide record of thirty American cities and compared the results with the record of England and Wales.

HOMICIDE IN AMERICAN CITIES

"According to the published mortality statistics of the Bureau of the Census for 1910," says Mr. Hoffman, "the number of deaths from homicide in the registration area, as finally reported for that year, was 3,190, equivalent to a death rate of 5.9 per 100,000 of population. The average rate for the ten-year period ending with 1909 was 4.3, and for more recent years in detail the rates were 5.0 for 1906, 6.3 for 1907, 6.4 for 1908, and 5.6 for 1909. Only two specific methods are returned, it being stated that out of the 3190 deaths from homicide in the registration area 1852, or 3.4 per 100,000 of population, were caused by firearms; 452, or 0.8, by cutting or piercing instruments and 886, or 1.6 per 100,000 of population, by other means."

He presents a table showing that the rate of homicide increased from an average of 5 per 100,000 of the population during the ten years ending with 1891 to 7.2 during the ten years ending with 1911, the maximum occurring in 1907, when it attained to 8.8 per 100,000 of the population. Making all due allowance for errors the census returns unquestionably establish the fact that not only is the homicide rate in the United States exceedingly high, but that the rate has materially increased during recent years. During the decade ending with 1910 the highest homicide rate was in Memphis, where it attained 47.1 per 100,000 of the population; in 1911 it rose to 63.4; in Charleston it was 27.7; in Savannah, 25.6; in New Orleans, 22.2; in St. Louis, 12.6; and in San Francisco, 11.2. Our criminal record for 1911 is even more unenviable especially in the large cities. Chicago led off with 203 homicides (according to a recent report of the Coroner the number for the past year was 221); New York, not including Brooklyn, followed with 197; St. Louis had 108, and Memphis, 85; the aggregate for the thirty cities being 1,300. Comparing this record with that of England and Wales Mr. Hoffman finds the advantage very much on the side of the English. Thus in all England and Wales in 1909, with a population of nearly 36,000,000 inhabitants, there were only 287 homicides, hardly more than were reported in the two American cities of Chicago and Memphis. On this point Mr. Hoffman says:

"This comparison emphasizes the extremely high homicide rate prevailing in the United States at the present time. For males and females the average rate for England and Wales was 0.9 per 100,000 of population, against 4.3 for the registration area of the United States. In other words, there was an excess of 378% in the homicide mortality of the United States over the corresponding homicide record of England and Wales. Comparing males only, the rate for England and Wales was 0.9 per 100,000 of population, against 6.5 for the registration area of the United States. The American rate, therefore, was 622% in excess of the English rate. For females the English rate was exactly the same

POLITICS AND PENITENTIARIES

as for males, or 0.9 per 100,000 of population, whereas for the registration area of the United States the female rate was 2.0 per 100,000 of female population."

Mr. Hoffman observes what is obvious to every well-informed person, that such a record brings out in startling contrast the already large and increasing disregard of human life in the United States. The figures which he presents go far toward disproving the truth of the assertion which we sometimes hear that the American people are the most law-abiding in the world, and they seem to confirm the truth of the statement made some years ago by Mr. Andrew D. White, that the United States now leads the world in the amount of crime committed within its borders, unless we except Southern Italy and Sicily. Such a showing is discreditable to us as a people and the problem of how to check this increasing criminality is certainly one of the greatest that confronts our civilization.

JAMES W. GARNER.

POLITICS AND PENITENTIARIES.

Press Dispatch. "Chicago, December 14, 1912.—Governor-elect Dunne is semi-officially announced to have selected, as chairman of the State Board of Administration of Charities (vice L. Y. Sherman), John Doe, an active member of the Democratic State Central Committee; and, as warden of the State Penitentiary at Joliet (vice E. F. Murphy), Richard Roe, chairman of the Democratic Campaign Committee."

The above is the kind of announcement nowadays to be seen in the newspapers of Illinois, and of other States in which the recently successful party is a different one from the victor at the election of four years ago.

And this is our boasted American civilization! How civilized is this practice of ours! How reasonable! How highly moral! How humane! How practical!

Ten thousand or so people—dependent, defective, delinquent—are under the care of the State of Illinois; a heavy responsibility, needing wisdom, experience, high character, and tried ability for its management. Modern science and philanthropy are doing their best to establish sound principles and to develop efficient methods. The community is struggling to cope with the urgent problems which disease, misfortune and crime force upon it through these inmates of its institutions. The world is growing wiser every day with new and better methods for avoiding the crude blunders of earlier days. A good hope is visible for achieving something which shall justify this generation's boast that it is progressive and civilized. And now——

The chairman of the great state board and warden of the great

POLICE, GAMBLER, AND JUDGE IN NEW YORK

state penitentiary are to be chosen for their skill and success as *managers of the party's campaign*. The two officers whose power for good is greatest and whose need of professional experience is most urgent are to be selected as a reward for their services in partisan management!

Have they any experience in penitentiaries or in public charities? Have they ever devoted any part of their career to that work? Do they know what has been done, what ought not to be done, and what needs to be done? Have they given any test of their ability for such work, or even of their interest in it? These men named in the various dispatches *may* be qualified, for aught we know. But the announcement is that they are to be appointed, *not* because they are or are not qualified, but because they are successful campaign managers, as a reward for party services.

We appoint a bank teller or a factory foreman because he has proved his ability in that career. But we appoint the masters of destiny over our criminals and defectives because of skill in mustering votes.

Faugh! What a sham it is to prate of civilization, where such a practice prevails!

In October, 1910, there was an International Prison Congress in Washington—the first time in America. After their visit the foreign delegates made remarks. They were kindly and generous, but sometimes frank. The one thing they had all noticed was the subservience of penitentiary management in this country to the spoils system of partisan politics.

For our crude senselessness in this matter, we are a laughing-stock to the world.

So be it. We deserve it. The newspaper items of this month prove it anew.

J. H. WIGMORE.

THE POLICE, THE GAMBLER, AND THE JUDGE IN NEW YORK CITY.

On the sixteenth of July last, a man was shot in front of a New York City hotel, at two o'clock in the morning in the glare of the burning high white light of Broadway. That man was a gambler—the owner of a gambling-house, better called a den, though in outward aspect a palace in its furnishings and trappings. The gambler had been paying for protection, which, for the uninitiated into the immoral, unclean, unhealthy and unholy ways of city life, I may say, means that he had been bribing the police to blink his unlawful business. Beg pardon of business.

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Indeed, the police, it is very well known, do not wait to be passively bribed, do not wait to be corrupted, but almost always take the energetic initiative, and seek the bribe, accompanying the demand with threats of arrest and dire punishment if the intended victim does not succumb. Truth to say, the situation is so well known now that neither demands nor threats are needed. A gambler sets up his establishment knowing full well the condition he is to meet. He considers the police protection item an important and an absolutely indispensable one in his expenses. He is safe to ply his black trade to the ruin of innumerable families, to the wrecking of a thousand souls, to the destruction of a thousand otherwise useful spirits, to the driving of his victims into suicide, crime, pauperism, and insanity, and to the infinite benefit of himself.

If there were no gamblers like the man who was murdered, there would be no police situation in New York City today. The police are subdued to what they work in. The police had been receiving money from the murdered gambler—for whom some maudlin, imbecilic sympathy has been aroused, perhaps on account of reaction against the fierce violence, itself grossly imbecilic, of the attack upon the lieutenant caught in the mess. In return the police had been guarding the den. It was not disturbed. This was at first. But then came a change over the spirit of the gambler's dream. He would not pay the exorbitant price which was now asked for the protection of his business. A change you see had come over the spirit of the policeman's dream also; he had found out the gambler could well afford to pay more. They—the fleeced one and the fleecer—dickered and bargained and haggled—and quarreled. The place was raided. The gambler resented the raid. He was not being treated "square": other places were let alone. He determined to "squeal"—and he did. He went to the district attorney of New York County and laid the matter before him. On the sixteenth of July he was to appear before the grand jury. That must not be. Some official's head would be cut off. And who was the official? A lieutenant of police. This lieutenant was the head of the "vice squad"—a department of the police in charge of disorderly places—a very fruitful job, a very luscious plum. Whether the commissioner of police knew anything has not been shown. Investigation so far has not brought to light any facts which demonstrate, or point to the conclusion that he did. A superior must to a large extent depend upon his subordinates. A certain supervision, or guidance there must be; a certain knowledge of what is going on. But the most omnipresent, and omniscient human being would find it beyond him to get into the boots of all his subordi-

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nates. So this lieutenant ran his department. He had his collectors who went around at stated intervals to gather the "dough," the "protection money." The collectors were policemen and civilians. Poor policemen! They never got anything for assembling the cash that was enriching their superior. Their duty was to take and to give over, and seemingly they did. No policeman has as yet squealed on the lieutenant. The dignity of the department and of the whole force has been kept. No direct knowledge from these collectors have we. But no one doubts the fact. And a jury of twelve men of New York County has given its verdict of guilty. Think of it; proved even in a court of justice, and convicted by men of family, whose lives everyone thought would not have been worth a pin had they brought in a verdict of conviction. To continue—the gambler was to give evidence against the lieutenant. The latter called to him other gamblers. These tried to dissuade the irate one. They could not do it. The lieutenant was getting anxious. The time was going fast; the fatal moment was approaching. The gambler must not appear before the grand jury. "Hire some one to kill him. If you don't do it, I'll frame up a case on you, or I'll kill the skunk myself." And so the assassins were hired—four young gangsters—revolver wielders, gamblers, sports, men about town, gentlemen of leisure and of pleasure, ready for any light work which much fruit produceth. The assassins did the job. They escaped. The lieutenant had promised there would be no policeman around when the trick was done, and as you see, he had kept his word. But the public was stirred, and the force from top to bottom was not rotten. No more unjust accusations could be brought against the whole police force than were hurled at it in those evil days. No matter how much public indignation, no matter how much newspaper word-slinging—we have seen lately on several occasions how really feeble the Fourth Estate sometimes is—if the putrefaction had permeated the police, if the cancerous material had spread its venomous arms through every branch and twig and root of the tree, no public clamour, no efforts of the district attorney, no efforts even of the best private detectives could have done the remarkably good work performed by the detective bureau in running down the murderers and in hunting up the witnesses. That work, to my mind, would be, though no other evidence were available, conclusive of the core-soundness of the force. Every help of benefit to the district attorney was given by an efficient deputy commissioner. The assistant district attorney who tried the cases springing out of the murder complained sorely that the police had not appeared to testify, "that the state had to do without them." Great odds! Yes, true. But when you have said that the "vice squad" kept

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tight and one lone policeman who was kept away from post did not squeal, you have said nearly all. The rest is not discreditable to the police. They could not have done more. The witnesses against the lieutenant on trial for murder must come from the civilians he had hired, and perhaps from the subordinates he had corrupted and used. The latter did not budge. They were true men—to *their* principles. But before a whole organization is bespattered with mud, before it is covered with infamy and breach of public faith, let us gather more evidence which shall be spread over greater space. There is a time for screeching and screaming. The smug, comfortable citizen who wakes up one morning with a start, caused by the revolver shots of four assassins, and yells out his lungs crying "murder, murder, police, police"—and finds that the police will not answer his shout, has no reason in his shout. Nor have the eagle-eyed newspapers themselves any great cause for vengeance red in tooth and claw. A great deal must be forgiven the Fourth Estate, by those who know the how and the why of newspapers. To these men the boiling-cauldron editorials, and the eye-smashing head-lines are empty of reason, of sincerity, and of truth, and hence, of force to move.

The lieutenant's case is over. He is now in the death-house in Sing-Sing. The case of the four "gunmen" is over. They are now resting by the side of the lieutenant in the same house in Sing-Sing. But before their cases began the aldermen of our city roused by the newspaper clatter, entered upon an investigation. There have been many sessions of the committee of investigation. What has been proved?

1—That among the members of the force are perjurers, ex-convicts, men who were habitually disorderly when they were civilians, gang-leaders, burglars, wife-beaters and wife-deserters, men guilty of felonious assault, and one man who had cut the throat of a fifteen-year-old boy.

2—That men of bad character, who were dismissed from the force because of misconduct, were re-instated and promoted.

3—That on the other hand men were dismissed for trivial faults.

4—That police associations have tremendous power within the department of police. That the officers of these associations have easy berths in the force.

5—That four officers of these police associations together with one deputy commissioner compose the pension board.

6—That the police instigate crime.

7—That "frame ups" happen, that is, innocent people are accused of crime, and evidence against them manufactured. That very often the frame up is performed on a person known to be a criminal, either to satisfy private grudge, or to obtain the merit of capture.

JUDGE CARTER'S RESIGNATION

8—That the police get possession of stolen articles, and then retain them, and give them back to the owner only for a consideration.

(It is due to say that so far as the public goes only one case indicating 6, 7 and 8 has been published. Counsel for the aldermanic committee seems to hint in a recent newspaper interview, that there are more like cases).

9—That men under charges are allowed to resign. This procedure leaves the resigning officer an open way by which to come back.

Counsel for the investigating committee says that these branches of the force will be investigated: Chief inspector's office, bureau of complaints, bureau of records and filing, detective bureau, pensions bureau, bureau of repairs and supplies, the surgical bureau, the school of recruits, the police associations, trials of delinquent policemen, and the distribution of the force.

There is one matter connected with the trials for murder of the lieutenant and the four gangsters, which readers of this Journal should be told of. In these times of tumult and shouting against the slowness of motion of courts, and the lack of backbone in judges who preside over them it is refreshing and invigorating to witness the performance of the judge who presided over the two murder trials here. The rapidity with which the wheels of justice moved, the enlightened, learned, almost unerring certainty with which the law was laid down; the brushing aside of all excrescences and rank weeds; the dignified and firm keeping of counsel to the issues; the rehabilitation, for such it really is, in New York County—of the respect for the judicial ermine, and for the judicial mind in the souls of both counsel and public, the recovery of the common law power of the judge—at least in part—to direct the trial and to comment upon the evidence in charging the jury—were all elements in this situation which to a lawyer anxious for the future of law, and of his profession, and to a layman desirous of seeing swift, yet enlightened verdicts within the essential forms of law, could not but be highly pleasing and encouraging. What the appellate courts will say as to these points, it is premature to guess. But if they are keeping their eyes to the east and their ears to the ground, they hear the rumblings of the time, its strident needs, its imperative demands, and see the bright rosy light of a better age when law will come nearer to being justice than it has been for long.

ROBERT FERRARI.

JUDGE CARTER'S RESIGNATION.

At the first annual meeting of the Illinois Branch of the Institute which was held in Chicago in May, 1912, Judge Orrin N. Carter of the

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Supreme Court of Illinois was elected president of the state organization. Later, in August, at the meeting of the American Institute at Milwaukee, Judge Carter was prevailed upon to accept the presidency of the national organization. Thereupon he presented to the executive board of the state society his resignation of the presidency of that body and urged that it be accepted. After mature consideration, his wishes were acceded to and Judge William N. Gemmill, who has recently been re-elected to one of the judgeships in the municipal court of Chicago, was chosen to fill the vacancy.

The State organization may congratulate itself upon two scores: First, that it was able at its first annual meeting to secure the co-operation and leadership of such a master of his profession as Judge Carter, and one who at the same time finds many demands upon his time and energy. It is fitting in this connection that we should express our appreciation of his services.

Secondly, the society congratulates itself upon securing the election of Judge Gemmill, who is favorably known throughout the national organization and even much more widely. His selection to fill this important office augurs well for the future of the society.

ROBERT H. GAULT.

ANNOUNCEMENT—Attention is drawn to *Notes*, p. 795 ff, "The Illinois Prison Commission," supplied by James A. Patten, and an address by the President of Northwestern University, p. 804 ff.—[Eds.]

EUROPEAN SYSTEMS OF STATE INDEMNITY FOR ERRORS OF CRIMINAL JUSTICE.

EDWIN M. BORCHARD,
Law Librarian of Congress.

In an age when social justice is the watchword of legislative reform, it is strange that society, at least in this country, utterly disregards the plight of the innocent victim of unjust conviction or detention in criminal cases. No attempt whatever seems to have been made in the United States to indemnify these unfortunate victims of mistakes in the administration of the criminal law, although cases of shocking injustice are of not infrequent occurrence. The case of Andrew Toth, who was convicted of murder in Pennsylvania, sentenced to life imprisonment, and after having served twenty years was found to have been absolutely innocent, is still fresh in the public mind. There was no provision of law for relieving his terrible condition, the state legislature declined to make compensation, and only through the generosity of Andrew Carnegie, who pensioned him at forty dollars a month, was the man able to return to Hungary, his native land.¹ In England, the flagrant injustice meted out to Adolf Beck, who through the most lax administration of the criminal law was convicted for the crime of another man and was imprisoned for seven years, resulted at least in the establishment of the court of criminal appeal (7 Edw. VII, c. 23) though it left the unfortunate Beck without the slightest legal redress.^{1a}

Up to the present moment Anglo-American public law is wholly opposed to granting an indemnity to such victims of the errors of criminal justice. The safeguarding of society by the prosecution of crimes against it is, to be sure, an attribute inherent in all governments, one of the *jura majestatis*. For mistakes in exercising this sovereign right, says our law, there can be no liability of the state. We go even further. Whether the injury to the individual is accidental or intentional, on the part of the state or on the part of the *judge* (except one of most inferior jurisdiction), the injured person is left without redress.

¹Virginia Law Register, v. 17, p. 406.

^{1a}For a full report of this remarkable case of mistaken identity see Parliamentary Papers, 1905, v. 62, Cd. 2315, Committee of Inquiry into the case of Mr. Adolf Beck. Report from the Committee, London, 1904; Sims, George. The martyrdom of Adolf Beck. London, Daily Mail Office, 1904; Lowell, Government of England, New York, 1908, v. 2, p. 463. Parliament to some extent subsequently vindicated English justice by granting Beck a gratuity of five thousand pounds. The Epps case, reported in the *Chicago Tribune* of Sept. 23, 1912, and the Hartzell case in Chicago, reported in the press October 25, 1912, are typical of such injustice.

INDEMNITY FOR ERRORS OF CRIMINAL JUSTICE

Yet, within certain spheres of governmental action involving similarly a public interference with private rights, we admit freely that the state owes compensation to those individuals upon whom special damage is inflicted. When property is taken from individuals for the public use, our fundamental law prescribes that just compensation must be paid. Publicists as far back as Grotius, Puffendorf and Bynkershoek recognize that compensation is a necessary incident to the exercise of the right of eminent domain.² On the other hand, when in the administration of the criminal law, an equally sovereign right, society takes from the individual his personal liberty, a private right at least equally as sacred as the right of property, it dismisses him from consideration—regardless of the gross injustice inflicted upon an innocent man—without even an apology, much less compensation for the injury. Jurists, who uphold the right of the state to prosecute and convict innocent persons without making compensation, have been driven to draw fine distinctions between the taking of property and the taking of liberty for the public use. We shall discuss these distinctions below.

The ultimate end and object of government is to protect those rights which, as Blackstone denominates them, are the absolute rights of all mankind—the right to personal security, to liberty and to property. The unquestioned manner with which in Anglo-American law the liberty of innocent persons is sometimes taken is all the more startling in view of the history of individual rights since *Magna Charta*.

The object of this article is to show the methods by which the legislatures of Europe have solved the problem of indemnifying those innocent individuals who, in the exercise of a sovereign right beneficial to society and to the state in its function as the preserver of the public peace, have been unjustly arrested, detained, or convicted and punished. First of all, it may be well briefly to review the law in this country and on the continent in order to show the wide difference in the civil remedies granted to persons who are erroneously arrested or convicted.

In the United States, we, of course, recognize the right of an individual wrongfully prosecuted on private information or complaint to sue the complaining witness for false imprisonment or malicious prosecution without probable cause. Likewise if his unfortunate predicament is due to the malfeasance, misfeasance or nonfeasance of an officer exercising ministerial powers, or even of certain judicial officers of inferior jurisdiction, the law gives redress to the injured person by an

²Citations in article of Henry Wade Rogers, Compensation as an incident of the Right of Eminent Domain, Southern Law Review, v. 5, N. S., 1879-80, p. 5.

action for damages against the officer.³ Where, however, the unjust detention or conviction results from the error, or even from the malice, fraud or corruption of a judge of general jurisdiction or where it results from an unfortunate concurrence of circumstances, the individual is without a civil remedy.^{3a} The rule in this country may be expressed as follows:

"No action lies in any case for misconduct or delinquency, however gross, in the performance of judicial duties. * * * If corrupt he [the judge] may be impeached or indicted, but the law will not tolerate an action to redress the individual wrong which may be done."⁴

"As a general rule no person is liable civilly for what he may do as judge while acting within the limits of his jurisdiction, nor is he liable for neglect or refusal to act. The rule is especially true where the judge is one having general jurisdiction, and in such case there is no liability even though he exceeds his authority. The overwhelming weight of authority is to the effect that where a judge has full jurisdiction of the subject-matter and of the parties, whether his jurisdiction be a general or limited one, he is not civilly liable where he acts erroneously, illegally, or irregularly. * * * Nor is he liable for a failure to exercise due and ordinary care, or where he acts from malicious or corrupt motives."⁵

The reason for the rule is thus stated by Mechem:

"Courts are created on public grounds; they are to do justice as between suitors, to the end that peace and order may prevail in the political society, and that rights may be protected and preserved. The duty is public, and the end to be accomplished is public; the individual advantage or loss results from the proper and thorough or improper and imperfect performance of a duty for which his controversy is only the occasion. The judge performs his duty to the public by doing justice between individuals, or, if he fails to do justice as between individuals, he may be called to account by the state in such form and before such tribunal as the law may have provided. But as the duty neglected is not a duty to the individual, civil redress, as for an individual injury, is not admissible."⁶

The general rule of the immunity from civil suit of a judge having jurisdiction for injuries resulting to private individuals from his acts, however malicious or corrupt, is therefore, well established in our law. In the absence of statute any liability of the state is of course absolutely excluded and up to the present time no such statutory liability has been assumed either in England or in the United States.

³Throop, Public Officers, New York, 1892, § 724.

^{3a}Excess of jurisdiction must be distinguished from entire *absence* of jurisdiction. For wrongful acts in cases where he has no jurisdiction at all the judge is civilly liable. See Mechem, Public Offices and Officers, § 628, and § 629; *Bradley v. Fisher*, 13 Wall., 335, 351; *Hughes v. McCoy*, 11 Colo. 591.

⁴Throop, Public Officers, New York, 1892, § 713.

⁵23 Cyc., pp. 568-9 and authorities there cited.

⁶Mechem, Public Offices and Officers, Chicago, 1890, § 619, citing Cooley.

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In most of the European countries, on the other hand, the innocent individual unjustly arrested, prosecuted or convicted has the civil remedies recognized by us—*first*, a right of action against the complaining witness or other person who has wrongfully accused him or otherwise aided in his prosecution,⁷ and *secondly*, a right of action against the officer through whose act he has been injured, where there has been an excess or abuse of the officer's legal powers.

But at this point the similarity ceases. The extensive immunities of a judge from private suit in this country are only recognized by the civil law within the narrowest limits. On principle the continental judge is liable for his tortious acts in excess or abuse of his authority like any other officer, the only qualification being that in matters within his judicial discretion he is allowed considerable leeway. But corrupt or malicious exercise of judicial powers in all cases involves the personal liability of the judge.⁸ Besides the right of action against ministerial officer or judge, however, the individual has certain remedies unknown to Anglo-American law. He has *thirdly* a right of action *against the state* for the illegal acts of its officers, including its judges. This is a subsidiary liability of the state fixed by statute which renders

⁷See, for example, art. 373 of the French penal code.

⁸See, for example, *Austria*, Art. 9 of the Organic Law of Dec. 21, 1867, and the Law of July 12, 1872, on the Judicial Power and the right of action for torts by judicial officers in the exercise of their functions. Also, *Spain*, Ley de Enjuiciamiento Civil, 1881, art. 903, et seq. Sec. 505 of the *French Code of Civil Procedure* provides that judges are liable to civil suit in the following cases: First, if there has been malice or deceit (*dol*), fraud (*fraude*), or extortion, committed either in the proceedings or in the judgment; * * * Fourthly, for a denial of justice. In France, the procedural difficulties of bringing an action against a public officer are somewhat greater than in Germany, although the substantive rights against a wrong doing officer are now practically the same in both countries. Up to the last decade the French officer enjoyed greater immunity for his official acts than the German. The *German Civil Code*, §839, paragraph 1, provides: "If an officer wilfully or negligently commits a breach of official duty incumbent upon him as towards a third party, he shall compensate the third party for any damage arising therefrom." Paragraph 2 provides that "if an officer commits a breach of his official duty in giving judgment in an action, he is not responsible for any damage arising therefrom, unless the breach of duty is punished with a public penalty to be enforced by criminal proceedings." This last clause applies to cases of wilful perversion of justice under § 336 of the penal code and includes malicious or corrupt exercise of the judicial power. The commentaries of Planck and Staudinger explain the narrow limitations of paragraph 2 just quoted. It applies first to a *final judgment only* and does not excuse gross negligence, malice or corruption. For all intermediate and interlocutory orders and decrees—as in negligently ordering an arrest or attachment, declining to receive evidence, failure to call a witness demanded by a defendant, a disregard of undisputed testimony—the judge is civilly liable and is not protected by the immunity granted in paragraph 2 of § 839. See Nöldeke, *Die civilrechtliche Haftung des Richters nach dem B. G. B.*, in Gruchot's *Beiträge zur Erläuterung des deutschen Rechts*, volume 42, 1898, p. 795, at pp. 808, 821-822; Delius, *Haftpflicht der Beamten*, Berlin, Guttentag, 1899, pp. 206, et seq.

the state and the officer liable *in solido* for the injury to the individual.⁹ It will be noted that under this head state liability apart from judicial and personal culpability, is not recognized. *Fourthly*, certain constitutions, such as those of several of the cantons of Switzerland, under the head of personal liberty, allow a direct claim against the state for illegal arrest. These cover cases of arrest in disregard of the forms of law or of its substantial provisions. While *habeas corpus*, with the possibility of action against some inferior officer, would probably be the remedy in this country, a *direct* action against the state is permitted in these Swiss cantons. The claim here does not arise from the admitted innocence of the accused, but from the illegal infringement or interference with his personal liberty. *Fifthly*, and lastly, we have in Europe the case of an indemnity awarded by the state to those erroneously arrested, detained and imprisoned individuals whose innocence is subsequently established.

Most of the countries of Europe, after years of struggle on the part of reformers, have now by statute recognized the liability of the state for injustice thus inflicted. The discussion of this subject will occupy the remainder of this article.

HISTORY.¹⁰

In Greece and Rome the procedural distinctions between civil and criminal law were not clearly marked. Prosecution was by the individual who suffered the consequences of the specific act. Nevertheless, it was even then admitted that the private complainant, *calumniator*, was liable to the defendant in damages for a wrongful accusation or prosecution. The recognition of this liability of the complaining witness continues throughout the middle ages. In the *Constitutio Criminalis Carolina* of Charles V of 1532, it is provided, (article 12) that the complainant must furnish bail for the damages suffered by the accused should the complaint not be sustained. When the prosecution of crime became the function of the state alone and purely a matter of public law, the question of compensation to an unjustly accused or convicted

⁹Ziegler, E. Die direkte oder subsidiäre Haftung des Staates und der Gemeinden für Versehen und Vergehen ihrer Beamten und Angestellten, in Zeitschrift für Schweizerisches Recht. n. F. v. 7, (1888), pp. 481-562. See also, Stengel, Karl, v. Die Haftung des Staates für den durch seine Organe und Beamten Dritten zugefügten Schaden, in Hirth's Annalen des deutschen Reichs, 1901, pp. 481-508, 561-592.

¹⁰The history of the movement, both in legislation and in literature, for the indemnification of unjustly arrested, detained and convicted persons, may be found in Geyer, Die Entschädigung freigesprochener Angeklagten. Nord und Süd, v. 18, 1881, pp. 167-184; Pascaud, H. Erreurs judiciaires in Nouvelle Revue, Jan. 1, 1891, v. 68, pp. 144-162, and in Revue critique de législation, 1888, pp. 597-637; Riecker, W. Die Entschädigung unschuldig Verhafteter und Bestrafter, Tübingen, 1911; Bernard, M. P. De la réparation des erreurs judiciaires, Revue critique de législation, v. 37, 1870, pp. 360-415, 481-523.

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person, where the state was the complainant, was left out of consideration.

The movement for the indemnification by the state of erroneously convicted persons was begun toward the end of the eighteenth century in France, the land of "liberty, equality and fraternity," and of the "social contract." One of its most earnest champions was Voltaire, the friend of the oppressed. He had taken a prominent part in securing the acquittal and restoration of the rights of Calas, of the Sirven family, of De La Barre and others.¹¹ It was probably due to the intimate correspondence between Voltaire and Frederick the Great that we find in Prussia in 1766 the first legislative expression of the obligation of the state to indemnify unjustly arrested and detained persons.¹² This decree provided:

"If a person suspected of crime has been detained for trial, and where, for lack of proof, he has been released from custody, and in the course of time his complete innocence is established, he shall have not only complete costs restored to him, but also a sum of money as just indemnity, according to all the circumstances of the case, payable from the funds of the trial court, so that the innocent person may be compensated for the injuries he has suffered."

This equitable provision was probably short-lived. At all events, it is not found in the Prussian Code of Criminal Procedure of December 11, 1805.

In 1781 the Academy of Sciences and Fine Arts at Chalons-sur-Marne again agitated the question, prompted undoubtedly by the severe cases of injustice by erroneous conviction which had then lately occurred in France. The Academy awarded two prizes for the best essays on the following question:

"When the civil society, having accused one of its members, by the agency of its public authorities, fails in its accusation, what would be the most practicable and least expensive means to secure to the citizen, recognized as innocent, the indemnity which is due him by natural law?"

Prizes were awarded to the authors of two monographs, which have since become classics in the literature of the subject.

The author of the first work, *Le sang innocent vengé ou Discours sur les réparations dues aux accusés innocents*, is Jean Pierre Brissot de Warville; the second, by the Intendent of Finances, Louis Philipon de la Madelaine is entitled *Des moyens d'indemniser l'innocence injuste-*

¹¹Hertz, Voltaire und die französische Strafrechtspflege, Stuttgart, 1887, p. 1 ff., p. 83 ff.

¹²Neue Verordnung um die Prozesse zu kürzen, § 9, cited from Berolzheimers Die Entschädigung unschuldig Verurteilter und Verhafteter, 1891, p. 7. Berolzheimer obtained a copy of the decree of Jan. 15, 1766, from the Prussian Staatsarchiv.

ment accusée et punie.¹³ Their thesis briefly was that while it is an injury to the public interest if we hesitate to prosecute a suspected guilty person for fear of striking an innocent person, still, public prosecution being a compulsory act, it would be wrong to punish the public prosecutor who has prosecuted an accused person subsequently declared innocent by the courts. The accused citizen, however, ought to receive compensation from the state. Brissot calls attention to the indifference of society to the fate of the innocently accused person and advances the argument that the withholding of an indemnity is inconsistent with the social contract.

Since that time many of the foremost publicists of Europe have given serious study to the question and it may not be out of place in the course of this paper briefly to direct attention to their labors.

Between 1786 and 1792 the question under consideration was constantly agitated in the French Parliament and by French jurists.¹⁴ In 1788 Louis XVI presented to the States General an ordinance accompanied by a declaration that he was surprised that nothing had been done in France to indemnify persons erroneously convicted, and that the king considered such indemnification as a debt of justice. In 1790 Pastoret in his *Théories des Lois Pénales* devoted a chapter to this subject (v. 4, p. 116 et seq.). He compared the misfortune of being innocently convicted to being struck by lightning and declared that the conviction of innocent persons was "as unavoidable a misfortune in our social order for the *moral* existence of the citizen, as hail or lightning is for his *physical* existence." In the same year Duport in his draft of a code of criminal procedure, which he submitted to the French Assembly, inserted an article which provided for indemnification by the state for those declared innocent of an indicted crime, leaving its amount to be determined by the jury. The French revolution put an end to the further consideration of this reform, with many other projected reforms, and not until one hundred years later (1895) did France by legislation undertake to solve the problem.

In 1783 the great Italian, Filangieri¹⁵ suggested the establishment of an indemnity fund to compensate those unjustly arrested through false complaints. In 1786 the suggestion was incorporated into the

¹³Both monographs are printed in the *Bibliothèque philosophique du législateur, du politique et du jurisconsulte*, Berlin, 1782, v. 4, pp. 275-329; v. 6, pp. 169-243.

¹⁴Pascaud, *Op. Cit.* *Revue Critique*, 1888, pp. 617-618. See also Berlet, *De la réparation des erreurs judiciaires*. Paris, 1896. Also, Bernard, *op. cit.*

¹⁵Filangieri. *La Scienza della Legislazione*, 1783, Book III, chap. 22, Milano. 1855 ed., v. 1, pp. 610 et seq.

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renowned code of Leopold of Tuscany, later Leopold the Second, in which it was provided (Sec. 46) that

"A fund shall be established out of the fines collected by the courts to indemnify those who have suffered from a crime, when the criminal can not make reparation,¹⁶ as well as those who without intention or negligence, but through an unfortunate concurrence of circumstances, have been arrested and subsequently acquitted, provided in both cases that the judge declare an indemnity as due under the circumstances and fix the amount."

The penal code of the Two Sicilies, chapter 6, article 5, contained a similar provision.¹⁷ Since then many Italian criminologists and jurists have supported the principle, among others, Carrara and Lucchini.¹⁸ Lucchini, the draftsman of the proposed code of criminal procedure of Italy has incorporated in his draft a provision covering state indemnity for unjustly convicted persons, but in spite of the vigorous campaign waged in its behalf, the principle still awaits legislative recognition in Italy.¹⁹

In England, Jeremy Bentham was the first champion of the doctrine of state indemnification for errors of criminal justice.²⁰ He considered the obligation of the state so obvious that any attempt to demonstrate it could only obscure it. On May 18, 1808 Samuel Romilly,²¹ an apostle of criminal law reform in England, introduced a bill in Parliament leaving it to the trial court to determine whether any and how much indemnity is due to an innocent individual acquitted after an unjust conviction. Solicitor-General Plumer opposed the bill on the ground that it created a distinction between those acquitted with and without the approval of the judge, and declared this a task equally dangerous and unconstitutional. The bill was withdrawn and no attempt has since been made in England to regulate the question, although Parliament has on several occasions granted lump sum indemnities as a

¹⁶It is interesting in this connection to examine Bentham's proposals in his *Traité de Législation civile et penale*, Paris, 1802, v. II, p. 370, et seq.

¹⁷Geyer, *Op. cit.* Nord und Süd, p. 174.

¹⁸Carrara, *Programa del corso di diritto criminali*, § 858, 5th ed., 1877. Lucchini, L. *Il carcere preventivo*, 1872, 2nd ed., Venezia, 1873, Appendix, p. 258, et seq; also in his *Elementi di procedura penale*, 2nd ed., Firenze, 1899, p. 403.

¹⁹Rocco, *arturo La riparazione alle vittime degli errori giudiziari*, in *Rivista penale*, v. 56, 1902, pp. 249-274; 395-435.

²⁰Bentham, *Jeremy. Op. Cit.* v. II, p. 378. See also Nicolas, R. *Des réparations aux victimes d'erreurs judiciaires. Revue critique de législation*, 1888, N. S. 17, pp. 348-356.

²¹*Memoirs of the Life of Sir Samuel Romilly*. 3rd ed., London, J. Murray, 1841, v. 2, pp. 84-86.

matter of grace to various innocent individuals released after having suffered imprisonment upon erroneous conviction.²²

In Spain, the principle, expressed in an unusually liberal form, had a brief existence of fifteen months in the ill-fated penal code of 1822.²³

While the question of indemnity was again agitated vigorously in France during the middle of the nineteenth century, finding among its supporters some of the leading jurists of the time,²⁴ yet the principle was first accepted in modern legislation in the cantons of Switzerland, where so many modern political reforms have received their first legislative expression.²⁵

The provisions of the codes of these various cantons are by no means uniform, some recognizing the right of indemnity only for imprisonment by reason of a conviction subsequently reversed on appeal, others for arrest and detention preliminary to acquittal only, (*Untersuchungshaft*, *détention préventive*), and still others for both. To some extent we shall discuss the provisions of these codes in connection with the laws of the other countries of Europe (*infra*).

Brief code provisions authorizing the award of an equitable compensation to an erroneously convicted person are found in the codes of criminal procedure of Baden, March 18, 1864, (art. 184) and of Württemberg, April 17, 1868 (art. 484), and in the penal codes of Mexico,²⁶ Dec. 7, 1871 (art. 344) and of Portugal,²⁷ June 14, 1884 (art. 126, sec. 6 and 7):

It is only, however, within the last twenty-five years that the countries of Europe have shown by their legislation, a determined and fully

²²The Law Times, Feb. 3, 1912, pp. 325-326; the Law Journal, London, Oct. 19, 1912, p. 623.

²³Spain, Penal Code of 1822, arts. 179-181, Appendix, p. 706.

²⁴Merlin, Répertoire, Bruxelles, 1826. V. *Denonciateur* and *Réparation civile*. Legraverend. *Traité de législation criminelle*, Paris, 1830, introduction, p. XXV. Dupin, *Observations sur plusieurs points importants de législation criminelle*, Paris, 1821. Faustin-Hélie. *Théorie du Code pénal*, Paris, 1843, t. I, p. 234. Bonneville de Marsangy. *De l'amélioration de la loi criminelle*, Paris, Cotillon, 1864, v. 2, ch. 18.

²⁵Tobler, Hans. *Die Entschädigungspflicht des Staates gegenüber schuldlos Verfolgten, Angeklagten und Verurteilten, mit Berücksichtigung des schweizerischen Rechts*. Zurich, 1905. The most specific provisions on the subject are found in the codes of criminal procedure of Vaud, articles 254, 267 and 539; Berne, articles 235, 243, 343, 367; Tessin, articles 52, 135; Aargau, articles 278, 364; Balle-Ville (Baselstadt), articles 63, 101, 107 and the law of Dec. 9, 1889, Appendix, p. 707; Fribourg, articles 220, 230, 350, 378, 388, 380; Neuchâtel, articles 245, 249, 303, 347, 431, 508. The constitution of Geneva of 1794 had provided for the award of an indemnity based on the number of days detention. The principle, extended, is preserved in the code of criminal procedure of Jan. 1, 1885.

²⁶Mexico, Appendix, p. 708.

²⁷Portugal, Appendix, p. 708.

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considered intention to fulfil the obligation of society toward the innocent victims of the errors of criminal justice. The Scandinavian countries, Sweden, Norway and Denmark, in the order named, enacted, in 1886, 1887 and 1888 respectively, extensive and elaborate laws on the subject. In considerable detail they worked out the conditions under which the right to indemnity shall be exercised, its various limitations, and the procedure for giving it effect as a remedy to the injured individual.²⁸ Indemnity is accorded both to erroneously convicted persons and to those erroneously arrested and detained. Of the three the law of Sweden is the most conservative, the law of Denmark the most liberal—in fact, the most liberal of all the countries of Europe. In 1892, Austria (Act of March 16, 1892)²⁹ enacted a law providing for compensation only to convicted persons acquitted on appeal and rehearing. The draft of a new law extending the indemnity to cases of detention pending trial has been under debate since 1905. A similar restriction of the class indemnified—erroneously convicted persons only—is found in the French law of June 8, 1895.³⁰ Hungary,³¹ the following year, in §§576-589 of its code of criminal procedure of December 4, 1896, provided compensation under certain conditions for both erroneously convicted and erroneously arrested and detained persons.

The leading country of continental Europe, Germany, waited until almost all the other important countries had by statute dealt with the matter before itself enacting legislation on the subject. It was not until 1898, in the law of May 20,³² that Germany enacted a law which, under very stringent limitations, awarded an indemnity to persons erroneously convicted, who on the rehearing of their case and reversal of the judgment

²⁸Sweden, Norway and Denmark, Appendix, pp. 709, 710, 711.

²⁹Austria, Appendix, p. 712. One of the best discussions of the Austrian law, including the legislative debates and "motives" is found in Hoegel, *Das gesetz betreffend die Entschädigung für ungerechtfertigte erfolgte Verurteilung*. Wien, 1901. See also Klewitz, A., in *Archiv für öffentliches Recht*, v. 7, pp. 311-329; Löffler, A. *Die Entschädigung unschuldig Verhafteter*, Wien, 1906; Krzymuski, Ed., in *Revue Penitentiaire*, v. 18, 1894, pp. 806-815.

³⁰France, Appendix, p. 713. A useful study of the law of June 8, 1895, with the legislative history of the question, is found in Berlet, A. *De la réparation des erreurs judiciaires*. Paris, 1896. See also, Pascaud, Bernard and Nicolas, *op. cit.*

³¹Hungary, Appendix, p. 714. Doleshall's article in *Gerichtssaal*, v. 53, 1896-97, pp. 253-285, is by all means the best article on the Hungarian statute.

³²Germany, Appendix, pp. 716, 717. There is a prolific literature in Germany. The debates of publicists are found in the *Verhandlung des deutschen Juristentags* (German Bar Association) 11, 12, 13, 16 and 22 session. The legislative history is best brought out in *Berichte der XI Kommission des Reichstages vom 20 April, 1896*. IV Session 1895-97. Drucksachen 294, and Entwurf nebst Begründung (Motives), Same Session, 9 Leg. Per. v. I, No. 73. The best commentaries on the Acts are those of Burlage, Berlin, 1905; Krause, Hannover, 1906; and Kähler, Halle, 1904.

were declared innocent. Six years later (Act of July 14, 1904) Germany extended the principle of indemnification to those under detention pending trial (*Untersuchungshaft*). Italy and Holland are debating the question and will probably soon join their neighbors in similar legislation.

THE THEORY.

It may seem strange that this principle of compensation, involving such an obvious act of justice on the part of the state, which had, moreover, received the general recognition and support of jurists, publicists and legislators should have had to wait so many decades before acceptance in the actual legislation of modern states. The reason for the delay was in part the unwillingness to open already cramped treasuries to unlimited inroads and the inability of lower and upper houses of legislatures to agree upon the proper limitations of the right, while not by any means the least obstacle was the bitter disagreement between jurists as to whether the indemnity was to be considered an act of grace and equity on the part of the state, or a legal duty and obligation. Before enacting legislation, the European legislator demands the support of sound legal as well as economic theory. For years lawyers debated this question back and forth. The statement in Merkel's *Juristische Enzyklopädie*, (1st ed., 1885, § 63), explains much:

"That such an indemnity would represent the real feelings of justice of the German people of the present time there can be no doubt. The reason why we at the same time hesitate to give this feeling legislative expression is partly (although by no means only) because we can not base it on a dogmatic legal ground."

Arguing from legal principle a large group of jurists, whose authority carried weight among legislatures and the people, advanced three arguments which seriously hampered the enactment of legislation on the subject.

The first argument is that the state in administering justice acts in its sovereign capacity and can not be held accountable in law for the burdens which particular individuals may have to suffer, when its sovereign right has been legally exercised. To err is not illegal. If an innocent individual is by mistake convicted, this is a burden which as a citizen of the state he must bear. This is the "act of state" theory, and a frank avowal of the "assumption of risk" doctrine. If, said these jurists, there has been an intentional wrong or illegality anywhere in the case, either on the part of the complaining witness, ministerial officer, court official or judge, the law gives the injured individual ample redress.²³

²³ Anschütz, Gerhard. Der Ersatzanspruch aus Vermögensbeschädigungen durch rechtmässige Handhabung der Staatsgewalt, in *Verwaltungsarchiv*. v. 5. (1895-97), p. 1 ff.

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To this the answer has been made that, while the individual in modern public law must bear the burdens of citizenship without compensation, this applies only to the general burdens borne by all the citizens as a whole, and not to special sacrifices asked from the individual in the interests of the entire community.³⁴ When we ask a citizen to become a juryman or a witness,^{34a} when his diseased animal is killed for fear of contagion,³⁵ when his house is destroyed to prevent the spread of conflagration, when his property is taken by eminent domain for public use, compensation is made for the special sacrifices he makes for the general benefit of society.

An ingenious replication is made to the contention that the taking of property and the taking of liberty for public use are analogous. By the taking of property, say the proponents of the "act of state" theory, the community is enriched, for which reason compensation is paid on the civil law doctrine of unjust enrichment. In the case of unjust conviction the state receives no equivalent. The deprivation of the liberty of the individual is no gain to the state.

If the compensation in eminent domain represented the public gain, this specious argument might carry weight. But it does not. The advantage to society generally exceeds by far the monetary value of the property to the individual from whom it is taken. The price paid represents not the gain of the state, but the loss of the individual. It is a special sacrifice that is asked of the individual, for which society compensates him.

Two other arguments against which the champions of the obligation of state indemnity had to contend were drawn from the civil law. The first was *Qui jure suo utitur, neminem laedit*; in other words, the state acting legally can legally injure no one. But in private law, from which this analogy is drawn, there has been a gradual change from this view of the legality of an act. The principle that he who legally uses his own incurs no legal liability has been restricted in application to the narrowest limits. Even a slight invasion of the rights of third persons (under an otherwise prima facie lawful use of one's own) has given rise to the application of the principle *sic utere tuo ut alienum non laedas*. The transition in point of view took place definitely in England

³⁴Mayer, Otto. *Deutsches Verwaltungsrecht*, Leipzig, 1896, v. 2, pp. 345 ff.; Bluntschli, *Allgemeines Staatsrecht*, Book X, ch. 5, München, 1868 ed., p. 409 ff.

^{34a}These illustrations show that at least in some of its applications the principle of compensation by the state for a deprivation of liberty is not unknown.

³⁵Löffler. *Die Entschädigung unschuldig Verhafteter*. Wien, 1906, p. 8.

in 1862, in the case of *Bamford v. Turnley*.³⁶ The general rule of both public and private law now is that a private act is considered lawful and is permitted by the state, there being admittedly no negligence or fault, only to the extent that it does not infringe the legal rights of others.³⁷

The other objection drawn from the civil law was: "without fault no liability," and for many years it proved one of the most serious. This principle of "no liability without fault" has been incorporated into the civil or private law of all civilized countries, and although American statutory and non-statutory law reveals many cases of liability without fault, the principle has been one of the great obstacles which the workmen's compensation laws have had to overcome.³⁸ Modern social and economic conditions, however, have brought about an important modification in the rigidity of the doctrine, so that for large classes of cases liability is predicated on the mere causal relation between the act and the injury, whether inflicted with or without fault. The workmen's compensation acts are perhaps the clearest illustration of this change in legal principle, at least as applied to cases in which a large social group is subjected to the danger of recurring accident and a more equitable distribution of the loss is mandatory.

The state, says Löffler, has escaped this obvious duty up to the present time because our feelings of law and equity are directed more toward property than toward liberty. Theft is a more reprehensible act than intentional personal injury and false imprisonment. The taking of private property, the killing of a man's diseased animal—these were recognized as subjects for compensation long before the taking of his liberty. Löffler ascribes this largely to the fact that the owners of property are a powerful social group and have induced an early social and legislative recognition of their rights, whereas those affected by wrongful arrest or conviction are a weak social group, whose voice is almost unheard, and whose rights are only at this late day securing slight recognition because of a general altruistic feeling of social justice.

It requires no further demonstration therefore to show that society rather than the individual should bear the risk of accident in the admin-

³⁶*Bamford v. Turnley*, Law Times Rep., v. 6, N. S. 721 at p. 723. The principle *qui jure suo utitur neminem laedit* may be directly traced to Justinian's Digest 50. 17. 151—*nemo damnum facit, nisi qui id fecit quod facere jus non habet*. It has, however, always been narrowly limited. See Blackstone III, 217, citing *Morley v. Pragnel*, Cro. Car. 510.

³⁷Löffler, Op. cit., p. 10. For examples of such action, see Unger, Joseph. *Handeln auf eigene Gefahr*, 3rd ed., Wien, 1904.

³⁸*Ives v. South Buffalo Street Railway Company*, 201 New York, 271, at pp. 285, 293-4, 298. See 46 American Law Review (1912), pp. 99-100, citing article by James Parker Hall in Journal of Political Economy, October, 1911.

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istration of criminal justice. Legislation having this end in view is supported by the same theory as compulsory social insurance, and general average in admiralty law. Where the common interest is joined for a common end, each individual member being subject to the same danger, the loss, when it occurs, should be borne by the community and not alone by the injured individual.

THE STATUTES.

An analysis of the European statutes may be useful to show particularly the limitations which European countries have placed on the granting of the indemnity. It will be seen that they have endeavored to restrict the indemnity to those only who are clearly shown to deserve it. Therefore, first, the class that has the right to receive the indemnity is strictly defined; secondly, to exclude the undeserving, specific and general limitations on the right are established from various points of view, such as censurable conduct of the claimant; thirdly, the injury indemnified is in general confined to the pecuniary loss only; fourthly, a very brief statute of limitations is provided; and lastly, the indemnity is in other respects restricted so that the burden on the State Treasury will not be oppressive. The debates preceding the enactment of many of the statutes show clearly that the fear of inroads on the State Treasury prevented the extension of the right and the removal of limitations in cases where an award was otherwise recognized as just. We shall discuss the statutes under the four heads: (a) who may be indemnified; (b) the limitations on the right; (c) the extent of the indemnity; and (d) the procedure for making the right effective.

WHO IS INDEMNIFIED.

As we have seen, Austria, France, Portugal and Geneva (code of criminal procedure, January 1, 1885), grant an indemnity for the injury suffered by reason of conviction and imprisonment where on retrial an acquittal takes place. Indemnification both for acquittal on appeal after a conviction, and for detention pending trial followed by acquittal or discharge is provided for in Sweden, Norway, Denmark, Germany, Hungary, Berne, Fribourg, Neuchatel, Basle and Tessin. The award of an indemnity is *compulsory* in case of acquittal on appeal after a conviction—that is, a right of action is given to the individual—in Germany, Norway, Denmark, Hungary, Portugal, Mexico, Neuchatel and Basle. It is also compulsory in case of detention followed by a discharge from custody or acquittal on first trial in Germany, Denmark and Norway. In Germany, however, before the action lies, the court acquitting the accused on retrial, must, simultaneously with the judgment of acquittal,

issue a decree to the effect that an indemnity in the case is warranted by the facts, which decree is a condition precedent to the right of action. The relief is *discretionary* in both cases—acquittal after conviction and detention pending trial—in Sweden and Fribourg. It is discretionary in case of acquittal after conviction only in Austria and France, and discretionary in cases of discharge from custody in Hungary, Vaud, Neuchatel and Basle. In Norway and Vaud, it is also discretionary in case of a *nolle prosequi*; in general, however, a *nolle prosequi* does not open the right to the indemnity at all, a valid judgment or order of the court being required. It is explained by the committee report on the French law that the indemnity was left discretionary with the judge for the reason that it was considered best, instead of making the relief compulsory and specifying the conditions which limited the right, to prescribe no conditions, leaving the judge to determine in each case the effect to be given to the concrete circumstances in limiting the propriety of an award.

Innocence must be shown affirmatively on the part of the claimant in France, Germany, Norway, Hungary, Sweden, Mexico and Neuchatel. In Germany the claimant may show in the alternative that there is no longer a well-founded suspicion against him. In Hungary and in Sweden in case of unjust detention pending trial he must show any one of three things: First, in both countries, that the act for which he is held has not been committed. Second, in Hungary, that the accuser has not committed it; in Sweden, that its author was another than the accused. Third, in Sweden, that from all the circumstances it could not have been committed by him; in Hungary, that while committed by him it was not in a legal sense a punishable act.

Hungary makes an interesting distinction between cases of unjust conviction and cases merely of unjust detention pending trial. In the first case, where the sentence has been served, damages are due *ipso facto*, even though there is a *non liquet* acquittal. The *not guilty* are indemnified. In the second case, where as we have seen the award of an indemnity is discretionary, innocence must, nevertheless, be proved. The *innocent* only are indemnified. While this is not clear from the statute itself, the committee reports leave no doubt on the subject.³⁹ In this respect, the Hungarian law occupies an intermediate position between the two extremes. In cases of unjust conviction, Hungary has followed the Danish law; in cases of unjust detention, where proof of innocence is required, the Norwegian law has been accepted as a prototype.

³⁹Dolleshall, *Op. cit.*, p. 271.

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Bonneville de Marsangy, an ardent proponent of state indemnity, advocated that innocence be proved affirmatively by the claimant, as this was a new action, and on the plaintiff should fall the burden of proof. This theory was strenuously opposed by Heinze,⁴⁰ who in 1865 brought the subject prominently before the public in Germany, and by Zucker and Geyer, who claimed that our criminal law recognizes only one form of guilt or innocence—the state must prove a man guilty or else he is innocent. It would make an odious distinction between those acquitted with and without indemnity, between those proven innocent and those acquitted for lack of sufficient proof of guilt. As we have seen, however, a number of states have adopted the principle that innocence must be affirmatively proved by the claimant.

Other states do not require proof of innocence, but base the indemnity upon the mere fact of acquittal or discharge from custody, as for example, Austria, Denmark, Baselstadt and Tessin. In case of erroneous conviction, Denmark requires that it be “regularly proved that the penalty was not justified.” Some of the Swiss cantons show peculiar conditions in this respect. Berne in its penal code of 1854 permits in the alternative the establishment of innocence, acquittal because of doubtful guilt, and *nolle prosecute* for insufficiency of evidence, which is a most liberal if not a hazardous extension of the right. Fribourg in its code of criminal procedure of 1873 indemnifies acquitted, *nolle prossed* and not guilty “convicted persons.” Vaud strangely enough in its code of criminal procedure of 1850, indemnified persons *nolle prossed* but not those acquitted by valid judgment. Luzerne in § 313 of its code of criminal procedure requires that the accused should have been prosecuted without basis (*auf ganz grundloser Weise*). By this is meant the absence of suspicious conduct, lying, attempt to run away, to conceal evidence, etc.,—what the Germans call *prozessuales Verschulden*.

It is curious to note that in Schwyz and Zurich where the legislator has not provided for indemnity the courts have at times allowed it.⁴¹ They have limited it to such cases as show an entire absence of guilt and denied it where the evidence indicates a well-founded suspicion. This tendency to base the indemnity on the probability of guilt finds strong opponents among those authorities and courts in whose opinion mere acquittal justifies the indemnity.

The chief objections raised against the German law are that it fails to indemnify accused innocent persons who are *nolle prossed*, per-

⁴⁰Heinze, Rudolf. Das recht der Untersuchungshaft. Leipzig, 1865.

⁴¹Tobler, Op. cit., p. 35.

sons whose property has been attached in criminal proceedings and those who, by giving bail, have escaped detention pending trial.

There is considerable difference in the legislation of these various countries as to the right of third persons injured by the conviction or detention of another to sue for the indemnity. In Germany, those who have a legal right to support from the unjustly accused person, have an independent action, limited, however, to the amount of the support of which they have been deprived. In Hungary, these same persons have a right of action for their lost support only where the accused has declined to bring the action himself. It is, moreover, limited to cases of unjust conviction, and not merely unjust detention pending trial. In Austria, a claim for lost support can be brought only by the surviving husband or wife, children or parents, where the accused began but dropped the action or where he is deceased. In most countries, Germany being practically the only exception, death of the erroneously accused (or desertion of family, as in Sweden), is a condition precedent to the bringing of the action by third persons, either heirs or dependents. In France, Austria and Hungary the right passes to his surviving spouse, ascendants and descendants in a direct line. In Denmark, ascendants are excluded. In Hungary, in case the erroneously accused person has already paid the death penalty, those who have the legal right to support may bring the action, provided they can show *that they are dependent* on the support of which they have been unjustly deprived.

Earnest objections have been raised against this limitation of the heritability of the claim. It is said⁴² that the moral integrity of the person is the common property of his family, and that damage to property rights is the basic element of the individual rights of each. Claims of both categories, therefore, must be heritable. Legislation having in mind only a right to support disregards these considerations. In spite of Jellinek's assertion that this right to indemnity is a public subjective right, and therefore personal only,⁴³ most of the states of Europe have recognized the heritability of the right so far as pecuniary damage is concerned. Binding even recommends, and we believe properly so, that both the moral satisfaction and the claim to pecuniary indemnity should be transferable *ab intestato*. This point of view is followed by the Danish and the French law, but is rejected by the Swedish, Austrian, German and Hungarian law. In France it is provided that relatives of a

⁴²Doleshall. Op. cit., p. 274, et seq.

⁴³Jellinek, G. Staatsrechtliche Erörterungen über die Entschädigung unschuldig Verurtheilter, Zeitschrift f. d. privat- u öffentliche Recht der Gegenwart, v. 20, 1892, pp. 455-467.

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degree further removed than would involve a material injury to them have no right to the claim.

(B). LIMITATIONS.

A limitation almost uniformly expressed in the statutes is that the claimant shall not have intentionally or by gross negligence caused his detention. The statutes of some of the countries such as Germany, Hungary, Norway, and Sweden, specifically mention certain limitations in cases where the detention or conviction may be said to have been due to the act of the claimant himself—thus, for example, where there has been an attempt to flee, a false confession, the removal of evidence, or an attempt to induce a witness or an expert to give false testimony or opinion, or an analogous attempt to suppress such testimony or opinion. The statute of Denmark recognizes the possibility of extenuating circumstances. It is there provided, that where, for example, the attempt to flee or the making of false statements, etc., is considered by the judge as having been due to fear, annoyance or excusable error, he need not refuse the indemnity. He may award an indemnity reduced in proportion to the offense.

Germany has gone furthest of all in defining the conditions and limitations under which the claim shall be excluded. In the act of 1904, the claim may be rejected if it appears that the act charged involved an infamous or immoral transaction, or was committed during a state of drunkenness which excluded the exercise of free will, or when it appears from the circumstances that the accused had prepared to commit a felony or lesser crime. These may be called conditions of exclusion bearing on the *substantial* justice of the claim. Similar restrictions are found in the Hungarian statute. But Germany has gone even further and has provided expressly that certain other delinquencies of the claimant, having no connection whatever with the act charged, shall likewise deprive him of his right to relief. Thus, article 2 of the German Act of 1904 provides that the claim may also be denied where the accused at the time of his release is not in possession of his civic rights, or was under police surveillance, or where he has been punished or sentenced to the penitentiary and three years have not elapsed since the termination of the sentence. In most countries these extraneous delinquencies and their effect on the right are left to the discretion of the authorities passing on the claim, whether judge or administrative board.

As we have shown above, France expressly declined to specify any limitations on the right, leaving it to the judge to determine what acts or facts shall constitute a sufficient objection to the payment of an indem-

nity. A slight difference between the Hungarian and German statute may here be mentioned, in that Hungary considers the failure to note an objection or appeal against the verdict as sufficient to warrant a denial of the indemnity, whereas Germany expressly provides that such failure to note an appeal shall not be construed as negligence. The draft of the proposed law of Austria governing unjust detention provides that

"Where the accused through inexcusable negligence has failed to object to the imposition or prolongation of the detention when he had good ground so to do, he shall be denied the award of an indemnity."

Several of the statutes exclude the remedy where the act has been committed under duress, necessity, or self-defense, but this appears to us as an unjust limitation.

A very brief statute of limitations is generally provided—from three months to six months is the usual time limit for making the claim. Denmark makes an exception in permitting the action to be brought within a year from the day on which the accused had knowledge of the circumstances on which he bases his demand. This provision is rather elastic, and we have been unable to ascertain how it has been interpreted by the courts.

(c). **EXTENT OF THE INDEMNITY.**

As a general rule, with but few exceptions, only the pecuniary damage is compensated. In this respect, more than in any other, the statutes have fallen short of the wishes of their advocates, because in case of an unjust detention or conviction the moral damage is by far the more serious element of injury. Even the Carolina Code of 1532 recognized that "*Schmach und Schande*" (suffering and shame) were proper elements of compensation.

Germany, Austria, Sweden and Norway indemnify for the pecuniary injuries suffered. Germany considers that these include not merely physical injuries and lost profits, but also the losses to *future* income, but they do not of course extend to moral injuries. In the statutes indemnifying for erroneous conviction, it is the injury suffered from the execution of the sentence, the actual wrongful imprisonment, which is compensated. Sweden provides expressly that the indemnity is to cover the "suspension or restriction of his means of existence resulting from the deprivation of his liberty." The French, Danish and some of the Swiss statutes are the most liberal. France provides indemnity for the damages (*dommages-interêts*) suffered. In practice, however, so the authorities say, account is taken of the moral injury resulting from an unjust conviction, which is, indeed, hard to separate from the pecuni-

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ary. The Danish statute extends the indemnity to "the wrong, injury, and pecuniary losses which he has suffered." Whereas most of the Swiss codes of criminal procedure provide for indemnity without specifying what injuries are to be indemnified, the code of criminal procedure of Neuchatel in article 508 provides that

"In case the new decision declares the condemned person innocent, there shall be awarded to him by the court damages proportioned to the material and moral injury he has suffered by the erroneous conviction."

The Hungarian statute requires first, a return of all money penalties; secondly, the return of the costs of proceedings and the value of confiscated property; thirdly, compensation for income lost during the imprisonment; and fourthly, money damages may generally be granted. How these are to be estimated and what they are to cover is not stated. Whether they cover the loss of position, diminution and falling off in business, and loss of credit, or whether they are simply confined to the definite actual fixed property losses can not be established. The committee reports (motives) lead to the inference that more than the property loss was intended to be covered, for the Swedish and Austrian statutes are characterized as unsatisfactory in this regard. It may be stated in addition that it is the general rule in Europe to provide in the codes of criminal procedure for a return of costs to an accused person declared to be innocent.

The French law notes an express difference between material and moral injuries in the matter of heritability. Both pecuniary and moral losses are the subject of indemnity on the part of those who are sufficiently near in relationship to the accused for the presumption to be drawn that they have suffered by the conviction of their relative. But, as we have shown, the right is not extended to relatives of a degree further removed than would involve a material injury resulting to them from the unjust conviction.

It is curious to note that the draft of the proposed Austrian law according indemnity for unjust detention, denies any indemnity for a detention of less than eight days. The debates show that this is based on financial considerations. The German statute of 1904 similarly excludes from indemnity the mere arrest and detention preliminary to commitment for trial, except when followed by detention pending trial, in which latter event the preliminary detention is calculated as a part of the whole. This limitation is unjust, and is so recognized by the commission redrafting the Code of Criminal Procedure,⁴⁴ who recommend indemnification even for a brief preliminary detention. Only

⁴⁴Protokolle der Kommission zur Reform des Strafprozesses, II, p. 284, ff.

where the arrest is followed by almost immediate release, where there is practically no real detention, is an indemnity, says the commission, unnecessary. A provable injury is in such cases, in the opinion of the commissioners, generally impossible. To us, this proposition seems open to debate, at least.

In general the statutes recognize the obligation to accord satisfaction for the moral injury by providing for the publication of the decree of acquittal at the domicil of the accused,⁴⁵ at the jurisdiction of the appellate court, and at various other places, which presumably will aid the accused to obviate and allay any prejudice from which he may have suffered by the publication of the fact of his detention or conviction. France goes the furthest in this direction, providing that

"The decree or judgment on appeal whence results the innocence of a convicted person shall be posted in the city where the conviction was first pronounced; in the place where the judgment was reversed; in the community or place where the crime or misdemeanor shall have been committed; at the domicil of those who demanded the appeal; and at the last domicil of the victim of the judicial error, if he is deceased, and shall be officially published in the *Journal Officiel*, and its publication in five newspapers, at the choice of the appellant, shall be ordered besides, if he requests it."

(D). PROCEDURE.

As will be seen from the statutes quoted in the Appendix, the procedure is generally very complicated; in fact so complicated that it is hard to understand how the poor acquitted individual thrown out on the world can ever find the means to prosecute his claim. The statutes vary greatly from one another, only one country, Denmark, making it a right justiciable before the ordinary courts in first instance. In general, it is regarded as an administrative proceeding, which perhaps more than anything else shows that the indemnity is considered an act of grace and not a matter of legal right. Sweden requires that the claim shall be addressed to the King and shall be examined by the Minister of Justice, who is to pass upon the justice of the claim and the amount of the indemnity. In Austria the trial court pronouncing the acquittal makes an official inquiry into the facts on which the claim for indemnity is based, and the sealed documents with an opinion of the court are then laid before the Minister of Justice, who in turn fixes the amount of the award. An appeal from his finding lies to the Supreme Court. In Hungary the trial court makes the investigation, places its findings before the highest court, which in turn, should it decide that the indem-

⁴⁵The codes of criminal procedure often provide for the publication of the judgment of acquittal in the Official Gazette (*Reichsanzeiger*); see, for example, the German *Strafprozessordnung*, sec. 411, paragraph 4.

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nity is justified, sends the papers to the Minister of Justice. On the basis of the findings of the highest court, the Minister of Justice fixes the amount of the indemnity.

In Germany, whose statute is the latest, it is provided that the second trial court, besides its decree of acquittal, shall hand down a decree as to whether an indemnity in the case is warranted by the facts disclosed.⁴⁶ This decree can not be appealed from. If it decides in favor of the claimant, he must make a formal application for indemnification to the district attorney in the jurisdiction where the trial court sat. The district attorney as a ministerial act sends the papers to the highest administrative board of the state (*Landesjustizverwaltung*). This board fixes the amount of indemnity, from which an appeal through the regular legal channels is granted to the claimant. Germany, therefore, has at least made this concession to those who have always contended that the right to indemnity is a strictly legal right and should be justiciable in the law courts.

Practically all the statutes provide that the state shall have a subrogated right against those individuals, officers or judges who by their negligence, corruption, or malicious conduct shall have caused or contributed to the detention or to its undue prolongation, or to the conviction of the innocent accused person.

CONCLUSION.

Such are the salient features of the more important European statutes on indemnification by the state of those whom, in the administration of its criminal justice, it has erroneously and unjustly arrested, detained or convicted. The principle has been clearly recognized, but as the examination of the statutes discloses the remedy in practice is granted only within the narrowest of limits. Nevertheless, a step has been taken in the right direction and one which we in this country would do well to follow. How we shall apply the principle, whether the relief shall be compulsory or discretionary, whether court or jury shall estimate the extent of the injury, within what limits and under what conditions the indemnity shall be awarded, are matters which legislatures can work out with little difficulty. While it is true that our lax methods of administering the criminal law, the possibility of acquittal on technical grounds⁴⁷ and the requirement of unanimity on the part of twelve jurymen, bring about nine cases of unjust *acquittal* to one case of unjust *conviction*, still the mere rarity of the occurrence is no excuse for a

⁴⁶For an example of such a decree, see Krause, *Op. cit.*, p. 213.

⁴⁷See, for example, *People v. Flack*, 125 New York, 324; also the Illinois case cited in Green Bag for June, 1912, p. 321.

failure to acknowledge the principle and to remedy the evil. It makes the individual hardship, when it does occur, seem all the more distressing. That there have been numerous cases of this kind besides the recent Toth case in Pennsylvania and the Beck case in England there is no doubt, notwithstanding the unauthentic returns from wardens collected by the American Prison Congress and reported in this Journal (May, 1912, p. 131) to the effect that there are but few cases of unjust execution of innocent persons.⁴⁸ The whole matter of compensation for unjust convictions for felonies and lesser crimes is well worth further study, to the end that within measurable time remedial legislation may cure this defect in our social institutions.

APPENDIX: CONTINENTAL STATUTES.

Spain—Penal Code of 1822, chap. 12. In force for 15 months. Articles 179-181 deal with indemnity for innocent persons. *Revue Penitentiaire*, v. 19, 1895, pp. 568-9.

Article 179. Every individual who, after having been the object of a criminal proceeding, shall have been declared absolutely innocent of the crime or fault to which the proceeding is due shall be immediately and completely indemnified for all the injuries and wrong experienced by him in his person, reputation and property, and there may not be required of him for this purpose any costs or expenses, and, if he desires, a fiscal attorney shall be charged with representing him in this demand for indemnity as if it concerned a claim advanced ex officio. However, wherever it is not impossible the indemnity shall be fixed in the same sentence which declares the accused absolutely innocent. If this proceeding is not possible the right to indemnity shall be declared and the indemnity fixed as it is prescribed in the code of procedure.

Art. 180. If the criminal action has been instituted by virtue of a private accusation the indemnity shall be at the charge of the accuser; and if the judge has co-operated by *dolus*, ignorance or negligence in the injustice of the information, he will incur the same responsibility in solido.

Art. 181. If the proceeding has been instituted ex officio and it has as its cause the *dolus* or fault of the judge the indemnity shall be integrally charged to said judge. If the judge on the contrary has acted in conformity with the law and it results from the information that the individual accused was absolutely innocent, the indemnity shall be given by the government either in money or under the form of an honor or recompense according to the circumstances of the person, which will be determined by the sentence, but it shall always be effective and sufficient to extend to all the injuries, wrongs and annoyances experienced by the innocent person.

Bâle-Ville (Baselstadt)—Law of December 9, 1889, on the indemnity accorded to those who have been unjustly incarcerated. *Annuaire de Législation Etrangère*, v. 19, 1889, pp. 685-6.

Art. 1. When a person has been incarcerated by order of the authorities,

⁴⁸A large collection of cases of unjust executions and sentences of life imprisonment has recently been published by Justizrat Dr. Erich Sello: *Die Irrtümer der Strafjustiz und ihre Ursachen*, Berlin, R. v. Decker's Verlag, 1911. Volume I, 523 p. Quarto.

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if the proceeding instituted against him has not ended in the remanding of the accused to the courts, he has a right at the end of the examination to an indemnity proportioned to the wrong which has been caused him and the duration of the incarceration, provided that there has been no fault on his part.

Art. 2. The claims for indemnity based on article 1 of the present law must be brought within fifteen days of the end of the proceeding which led to the incarceration, under penalty of being rejected. If the release and termination of the examination are the work of the police, the police must pronounce on the indemnity. Otherwise the claim is addressed to the authority which remands the individual.

Art. 3. Appeal is allowed against the decision of the police or other authority by making, within seven days from liberation from detention, a written complaint, with the grounds stated, to the president of the tribunal or the court of appeal.

Art. 4. The commission of the court of appeal, in article 31 of the law relating to the opening of criminal procedure of November 4, 1841, shall pass upon the complaint presented in accordance with article 3 of the present law.

Art. 5. The commission decides after having heard the authority charged with pronouncing the remanding or the police, and heard sufficient testimony on the basis of the amount of the claim to indemnity.

If the commission rejects the complaint the claimant may, under the head of expenses be compelled to pay up to one hundred francs.

Art. 6. The accused persons who have been liberated by a competent judge may demand of the state an indemnity proportioned to the wrong which has been caused them by the order of incarceration, and to the duration of the detention provided, nevertheless, that they shall not have been incarcerated by their fault.

Art. 7. When a criminal proceeding is reheard by the terms of articles 121 and 130 of the code of criminal procedure and results in an acquittal, or when it is recognized that the accused deserved a less penalty than that inflicted upon him, he may claim an indemnity proportioned to the pecuniary damage of all kinds which has resulted to him from the detention he has suffered (detention during the examination and detention as a penalty) provided, nevertheless, by his conduct he has not deserved condemnation.

Art. 8. The claim for indemnity based on the provisions of articles 6 and 7 of the present law may, as a general rule, be awarded immediately after the publication of the decree by the same tribunal which has ordered the liberation of the individual, or the diminution of the penalty. The claim must be decided after the public authorities have been heard.

By exception the tribunal may postpone the decision. The injured person may likewise demand a delay of fifteen days during which he may present his demand for indemnity. After that period all claim to indemnity is barred. The tribunal decides in last resort on the demands of indemnity submitted to it.

Art. 9. The competent authorities shall fix freely, taking account of all the circumstances, the amount of the indemnity which ought to be accorded by the terms of the present law.

Art. 10. The demands instituted by the terms of this law pass to the heirs after the death of the principal claimant.

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Art. 11. No demand for indemnity can be directed against the officials who in the exercise of their functions have ordered a detention pending trial, or a detention as penalty. On the other hand, the state may reimburse itself from its guilty employees in case of gross negligence for the amount of the indemnity which it has had to pay in conformity with the provisions of the present law.

Art. 12. Paragraph 63 and 101 of the code of criminal procedure of May 5, 1862, on indemnities due to convicted persons are abrogated from the day the present law enters into force.

Mexico—Penal Code of Dec. 7, 1871.

Art. 344. If the accused has been acquitted by the court, not because of failure of proof, but because his complete innocence of the crime with which he was charged has been established, and if he had not by his previous conduct provoked the presumption of his guilt, this shall be expressly stated in the judgment of acquittal; and when the accused demands it, the amount of his damage and lost profits which the proceeding has caused him shall be fixed in the judgment, after the district attorney has been heard. In this case the civil responsibility is paid out of the general indemnity funds, if by section 348 the judges do not appear responsible or are without sufficient means to pay.

Art. 345. The unjustly accused has a right of action against his unlawfully complaining witness or informant.

Art. 348. The judges and other public officials, employees or officers are civilly liable for arbitrary or wrongful arrests which they have ordered; for illegal prolongation of imprisonment, for injuries caused by ignorance or tardiness in the transaction of their business; and for all misdemeanors or crime which they commit in the exercise of their functions and whereby injury is caused to others.

Portugal—Penal Code of June 14, 1884, Art. 126, Sec. 6 and 7.

Sec. 6. The judgment of acquittal on appeal from a conviction entitles the wrongfully accused person (if he demands it) to an equitable indemnity for the injury which he has suffered through his imprisonment, if the penalty has not been a money fine. If the penalty has been a money fine already paid, it shall be refunded to him. The refunding and the indemnity are charged to the state.

Sec. 7. The judgment of acquittal shall be published in the Official Gazette on three successive days and in duly authenticated form, shall be fastened to the door of the district court where the unjustly convicted person resides, and on the door of the district court, where the conviction has taken place.

The Rehabilitation of duly acquitted persons in Portugal. Decree of Feb. 27, 1895. The law of June 14, 1884, revising the penal code enumerates the means of bringing about rehabilitation. *Revue Penitentiaire*, v. 19, 1895, pp. 920-21.

Article 11. If the accused is declared not guilty the new judgment shall declare void the judgment of conviction without reference to the provisions of the penal law and must rehabilitate the condemned before society, permit him to again occupy his legal status before conviction, as soon as the judgment shall have secured binding force. An extract of the judgment shall be published in the Official Gazette on three consecutive days and attached to the door of the court in the jurisdiction of the domicile of the rehabilitated person and to

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the door of the court of the jurisdiction in which the conviction was pronounced. Mention in the judicial statistics must be suppressed.

The public minister must furnish the legal means.

Art. 12. The judgment must award to the condemned person, if he requests it, a just indemnity for the injury suffered by the execution of the penalty, if there exist in the proceedings sufficient elements to appreciate this injury. In the contrary case, the indemnity must be fixed in an ordinary proceeding according to the legislation in force. If the penalty has been a fine and already paid the judgment must order its restitution.

Art. 15. It shall be permitted to revise and rehear the proceedings and judgment of a deceased convicted person, observing the previous provisions.

Art. 16. The only persons competent to demand this revision are the parents, descendants, spouse and brothers and sisters of the convicted person.

Sweden—Law of March 12, 1886, Concerning Indemnity to be Awarded against the State to Those Innocently Arrested or Convicted. Lag, angående ersättning af allmänna medel at oskyldigt häktade eller dömd; given Stockholms slott den 12 Mars 1886. Svensk Författnings-Samling. Number 8, 1886. Translated into French in *Annuaire de Législation Etrangère*, v. 16, pp. 591-2.

Article 1. When an individual shall have been arrested as guilty of a crime and the prosecution against him shall have been subsequently abandoned, or the accused shall have been acquitted, there may be awarded to him, or in his default, to his wife or abandoned children, to be borne by the state, an indemnity for the suspension or restriction of his means of existence resulting from the deprivation of his liberty, if it results from the proceedings that the crime for which he has been prosecuted has not been committed, or that its author was another than the accused, or that from all the circumstances it could not have been committed by him, and if in the two latter cases he can not be considered as an accomplice.

This indemnity shall not be awarded to him who has sought by flight or otherwise to escape the examination or to prevent the discovery of the truth by the suppression of evidence or objects, nor to him who intentionally by an untruthful statement made in court or elsewhere, or by falsely denouncing himself, or in any other way shall have been the cause of the proceedings which have been instituted or prosecuted against him.

Article 2. When an individual condemned to forced labor or prison or to fines, converted into a penalty depriving him of liberty, shall have suffered the burden of his penalty in whole or in part and after a new inquiry or proceeding made in the regular form, he shall have been acquitted, or condemned to a penalty less than that which he has already paid, there may be awarded to him, or in his default to his wife or abandoned children, to be borne by the state, an indemnity for the suspension or restriction of his means of existence resulting from the execution of the penalty, or of that part of this penalty from which he shall have been subsequently released, if he has not intentionally by an untruthful statement made in court or elsewhere, or by denouncing himself falsely, or in any other way, caused the penalty he has suffered to have been pronounced against him.

Article 3. A request for indemnity within the provisions of this law shall be addressed to the King and shall, to be examined, be presented to the Min-

ister of Justice within a period of a year beginning in the case provided for in article 1 from the day when the decision to abandon the prosecution or acquit the accused shall have become *res judicata*, and in the case of article 2 from the day when the judgment pronouncing the acquittal of the accused or his condemnation to a penalty less than that already suffered shall have acquired the force of *res judicata*.

Article 4. When an indemnity shall have been awarded within the terms of this law to an individual imprisoned or condemned in violation of the law, the State shall have the right of recourse against him or those who shall be responsible for the imprisonment or judgment.

Norway—The law of criminal procedure of July 1, 1887 (Jury law) Lov om rettergangsmaaden i straffesager, 1 Juli, 1887, No. 5, Sections 459-472. Norsk Lovtidende, 1887, p. 200 at pp. 285-6.

Section 469. When an individual is acquitted by a judgment after having already paid a penalty under previous conviction he shall on demand be paid from the Treasury, an indemnity for the damages which he has suffered by reason of the executed judgment.

For damages suffered during detention pending trial a person who has been discharged from prosecution, or who is acquitted by judgment, shall, on his demand, receive indemnity from the Treasury, if he successfully rebuts the proofs on which his guilt was predicated.

If the discharge from prosecution or the acquittal is based upon the fact that the transaction can not be brought within a provision of the penal law, or that punishment is excluded or suspended by reason of a circumstance recognized by the law, the court shall decide according to the circumstances of the case how far such indemnity is due.

Sec. 470. Indemnity is never to be granted where the accused by confession or otherwise through intentional conduct had provoked the judgment of conviction or the prosecution against himself, nor for detention pending examination which has occurred because the accused has attempted to flee or has so acted that the conclusion had to be drawn that he has sought to remove traces of the deed, or induce others to bear false witness, or to suppress their testimony.

Sec. 471. The fixing of the indemnity mentioned in section 469 may be demanded in the judgment or in the decree by which the case is terminated.

If this has not occurred or if the prosecution is abandoned without judgment or decree the accused may, within a month after the receipt of the notice, bring his demand before the court which had jurisdiction of the criminal prosecution, or if this cannot be done, before a court which might have had original jurisdiction over the case. The decision takes place by decree after the prosecuting attorney shall have been given an opportunity to defend the interests of the Treasury. If the Treasury is charged with a liability such as is here in question, it can make the claim which the accused would have had by virtue of section 466.

Sec. 466. "For negligent or otherwise improper conduct, so long as they are engaged on a case, public officers as well as private attorneys may be punished with fines, in so far as no greater penalty is by law applicable in the case, and damages are charged to them for the benefit of the person injured

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by their action. For the damages charged to a public officer, the State is equally responsible.

The State is not, however, responsible to a defendant for duties which an attorney according to section 107 should fulfil."

Sec. 472. If appeal is raised against a judgment on which this chapter provides legal liability the highest court, *ex officio*, examines the question of liability in so far as the decision of this question depends on the ground of appeal; but further examination takes place only in so far as the appeal on this matter has been demanded by one of the parties. * * *

Denmark—Law of April 5, 1888, on Indemnity for Unjust Detention and Conviction and on the Payment in Certain Cases of the Expenses of Appeals Instituted Officially. (Lov om Erstatning for uforskyldt Varelaegtsfaengsel og Straf efter Dom samt om Udredelse i visse Tilfælde of Sagens Omkostninger offentlige Straffesager, *Samling af Love og Anordninger*, vol. 11, 1886-90, pp. 242-244). (Translated into French in *Annuaire de Législation Etrangère*, v. 18, 1888, pp. 752-754).

Article 1. He who, after having been subjected to detention pending trial, shall be subsequently acquitted or released without his case having been prosecuted to judgment, has a right to indemnity to be fixed by the judge for the wrong, injury, and pecuniary losses which he has suffered, by reason of being deprived of his liberty, when it results necessarily from the explanations furnished that he was innocent of the wrongful act for which he was detained.

An equal right to such an indemnity belongs to him who has been subjected to detention pending trial by reason of inculpation in an act forbidden by a criminal law, but not involving a penalty greater than a fine or simple imprisonment.

Article 2. The right to indemnity above mentioned ceases when the accused has by his conduct provoked his detention pending trial. Nevertheless, when the judge recognizes that the suspected conduct of the accused may have been due to fear, annoyance or excusable error, he may award him an indemnity reduced in proportion.

Article 3. If the case goes to judgment without any accusation against the accused, the latter may, if he desires, demand that the indemnity due him be fixed by judgment pronounced when the case terminates. Nevertheless, the superior authority (in Copenhagen, the director of police) shall be advised in time sufficient to defend the public Treasury.

In all other cases the demand for indemnity for detention pending trial shall be the object of a special civil suit against the State. The summons shall be served on the prefect (in Copenhagen, the director of police) and on the examining magistrate who conducts the proceedings.

The claimant may bring his case before the tribunal of first instance in the place where he has been detained or directly to the superior court having jurisdiction over the examining magistrate, provided that it be not the Supreme Court. This action shall be without expense for either party, and the defendant charged with the interests of the State shall likewise take charge of the interests of the examining magistrate.

When the criminal action or judgment on the detention is appealed to a superior judge, the claim for an indemnity may be formulated and the judgment may be requested in the course of the appellate action. In that case the public

minister is charged with defending the interests of the examining magistrate and those of the Treasury.

The decision of the judge of first instance on the demand for indemnity for detention pending trial may be appealed from by the accused as well as by the public minister without limitation of amount.

Article 4. Every action for indemnity for unjust detention pending trial shall be brought within a year from the day when the accused had knowledge of the circumstances on which he bases his demand. If his demand is considered without basis, he shall be condemned to pay the expenses of the case.

Article 5. When a penalty pronounced by the judgment has been paid or expiated in whole or in part and it is regularly proved that the penalty was not justified, the condemned person has a right to an indemnity against the public Treasury for the wrong, injury, and pecuniary losses resulting to him.

The action for indemnity shall be instituted before the tribunal of first instance which had jurisdiction of the criminal case, service to be made on the superior authority and on that one or those of the judges who pronounced the conviction, or directly before the court immediately above, provided that it be not the Supreme Court. The provisions of article 3 concerning the actions for indemnity for detention pending trial shall apply moreover to the actions here in question.

Article 6. The right of action for pecuniary losses, after the death of the accused, passes to his spouse and to his descendants.

Article 7. The indemnities awarded in execution of the present law shall be paid by the Treasury, which shall have recourse against the judge when the latter shall have been guilty of abuse of authority, negligence, or other inexcusable fault.

Article 8. In case of acquittal of the accused, and in general in all cases where the action ends without resulting in a conviction, the expense of the penal action prosecuted officially shall be borne by the Treasury, unless it shall have been occasioned in whole or in part by an illegitimate act imputable to the accused.

Austria—Law of March 16, 1892, Number 64, Reichsgesetzblatt, 1892, pp. 477-8.

Law concerning indemnity for unjust conviction.

§ 1. He who has been legally convicted of a criminal act in accordance with the provisions of the code of criminal procedure, if on a new trial, the discontinuance of the prosecution or the rejection of the charge results, and furthermore in all cases in which acquittal subsequently takes place, may demand of the State an indemnity for the pecuniary injuries suffered by reason of the unjust conviction.

The claim is not permissible when the convicted person has intentionally brought about the unjust conviction or in case of a verdict obtained by contumacy has failed to make objection or take exception.

§ 2. Assuming the presence of the conditions of § 1, the claim may after the death of the convicted person be brought, or if begun by him continued, only by his spouse, children and parents, and only to the extent that these relatives are by his wrongful conviction deprived of support which was due to them from the accused.

§ 3. The claim is barred after three months from the day on which under sections 1 and 2 the claim might have been first brought.

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§ 4. The claim is to be brought by written request or protocol before the trial court of first instance which rendered the verdict of conviction and is to be made as definite as possible.

§ 5. The court is officially to undertake the necessary proceedings to establish the facts on which the claim is based, and may take the necessary proofs. All the circumstances for and against the claim are to be considered with equal care. Witnesses and experts may be called and oaths administered where necessary.

§ 6. When the inquiry is closed, the claimant is to be notified that he may make further statements in writing to justify his claim, for which purpose he is to have 14 days' time. The claimant may see the papers in the case.

§ 7. The sealed documents together with an opinion of the court is to be laid before the Minister of Justice who may request a supplementary inquiry or further explanations. The Minister of Justice takes jurisdiction over the claim and fixes the amount of the indemnity.

§ 8. The claimant has a period of 60 days to appeal from the finding of the Minister of Justice to the Supreme Court. The period can not be extended under any circumstances, nor can the extension be granted for default. The appeal does not require the signature of an attorney.

§ 9. The proceedings in the matter regulated by this statute and the relevant memorials are free from fees and postage.

§ 10. The law does not apply to convictions pronounced before the coming into force of this act.

France—Law of June 8, 1895, on the Revision of Criminal Judgments and Indemnities to the Victims of Judicial Errors. Bulletin No. 1706, *Bulletin des Lois*, 1895. This law is substituted for chap. 3, book 2, title 3, of the Code of Criminal Procedure, Articles 443-447.

Articles 443 to 445 inclusive deal with the procedure for reopening a conviction for a criminal act. Article 446 deals with the matter of indemnity for the innocent victim of errors of criminal justice and reads as follows:

Article 446. The decree or judgment of reversal whence results the innocence of a convicted person may, on his demand, award him damages for the injury caused him by the conviction.

If the victim of the judicial error is deceased, the right to demand the damages belongs under the same conditions to his spouse, ascendants and descendants (in a direct line).

It shall not belong to relatives of a degree further removed than would involve a material injury resulting to them from the conviction.

The claim for indemnity may be made at any stage of the procedure for the reversal of the original judgment.

The damages awarded shall be against the State, except that the latter has recourse against the civil person, the complaining or informing witness or false witness through whose fault the conviction shall have been pronounced. The damages shall be paid as expenses of criminal justice. The expenses of the appeal for reversal shall be advanced by the appellant up to the order of the court taking jurisdiction of the claim for indemnity; the expense after that order shall be paid by the Treasury of the State.

If the decree or definite judgment on appeal pronounces a conviction, the

condemned person shall be compelled to reimburse the expenses to the State, or to those who demanded the appeal, if there are such.

He who demands the appeal for reversal of the first judgment and loses shall be held to pay all the expenses.

The decree or judgment on appeal whence results the innocence of a convicted person shall be posted in the city where the conviction was first pronounced; in the place where the judgment was reversed; in the community or place where the crime or misdemeanor shall have been committed; at the domicile of those who demanded the appeal; and at the last domicile of the victim of the judicial error, if he is deceased, and shall be officially published in the *Journal Officiel*, and its publication in five newspapers, at the choice of the appellant, should be ordered besides, if he requests it.

The expenses of publicity here provided for shall be borne by the Treasury. Hungary—Code of Criminal Procedure, December 4, 1896, *Gesetzsammlung*, 1896, pp. 664, et seq. Indemnity in cases of unjust arrest, detention and punishment. Sections 576, et seq.

§ 576. He whom the court has legally acquitted of the charge against him or who has been discharged from prosecution, has a claim to indemnity when he has suffered arrest or detention for an act;

First, which he has not committed;

Second, which has not been committed at all;

Third, which he has indeed committed but which in the legal sense is not a punishable act.

§ 577. An indemnity for a temporary arrest or detention pending trial can not be claimed by a person who

First, has attempted to flee or has fled;

Second, has made a false confession or false avowal of the crime;

Third, to remove evidence of the deed, has sought to induce a witness or fellow accused to bear false witness or an expert to give a false opinion, or sought to suppress the testimony or opinion as the case may be.

§ 578. He who on the basis of a valid legal judgment has been deprived of his liberty or paid a money fine or from whom such fine has been exacted has a claim for indemnity;

First, when on rehearing of his case he is legally acquitted by a valid judgment;

Second, when on the rehearing or new trial a lesser penalty is prescribed against him than the one which he has already borne on the basis of the first judgment now declared invalid.

§ 579. An indemnity can not be demanded by one who

First, has made a false confession or a false avowal of the crime;

Second, who in the principal proceeding has intentionally suppressed the proofs upon which the court in the rehearing bases its judgment of acquittal;

Third, who in the proceedings establishing his guilt has not noted objections and appealed against the verdict;

Fourth, he who has voluntarily entered on his sentence as found in the lower court before that judgment has obtained legal force. (See § 505, paragraph 2; sec. 549, paragraph 1).

§ 580. Indemnity is made by the State.

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The indemnity covers a commensurate monetary compensation embracing the sum which the convicted person has paid as money fine and as court costs, the value of the objects which had been confiscated from him on the basis of section 63 of law 5 of the year 1878, and the sums which he has earned during the period of his wrongful imprisonment. Moreover, the court order establishing indemnity is to be published in the *Official Gazette* and in the official paper of the district where the court sits, or in a newspaper within the immediate vicinity, at the expense of the funds of the court, and is to be publicly displayed by the local authorities of the jurisdiction of the court and of the domicile of the accused, at a place designated by them.

§ 581. The claim to indemnity is barred when the individual does not make known his claim within six months from the time of notice served on him of the decree discharging him from prosecution, or of the judgment of acquittal.

§ 582. Those who by law or legally recognized custom have the right to demand support from the accused having such claim to indemnity, may in case of his declining to sue make a claim set forth in § 580 for this purpose. They may, if the accused has brought his action within the period prescribed in § 581, request the continuance of the proceedings; if, however, the unjustly accused has died before the expiration of that period without bringing his action for indemnity, these persons may within six months from the day of his death request the institution of the proceedings.

§ 583. In cases where a valid judgment establishes that an individual who has suffered a death penalty would have been legally acquitted, those dependents who had a right to support from him may, if they are dependent upon this support, bring an action for pecuniary compensation for the support of which they have been deprived. With reference to the publication of the decree awarding indemnity the provisions of the last paragraph of § 580 are to be applied with the modification that the decree is to be publicly displayed by the local authorities of the last domicile of the accused, and, also, if requested by them, in the domicile of his relatives, if they reside at another place. In the case of this paragraph the period prescribed in § 581 is to be reckoned from the day on which the decree discharging him from prosecution, or of acquittal, comes into legal force.

§ 584. The action for indemnity is to be brought in the court before which the criminal proceedings were brought in first instance, or in the judicial circuit in which that court of first instance belongs.

§ 585. The proceedings for indemnity may be instituted verbally or in writing.

§ 586. The court must investigate the data necessary to establish the indemnity through official channels, and may demand evidence from both the wrongfully accused and from the public prosecutor.

The court may call witnesses and experts. Before the end of the investigation the wrongfully accused is to be informed that his remarks and motions must be handed in in writing within eight days.

§ 587. At the end of the investigation the court places its findings before the royal Kurie, or highest court, which, in case it decides that the claim for indemnity is justified, sends the papers to the Minister of Justice. On the basis of the findings of the royal Kurie, the Minister of Justice fixes the amount of the indemnity.

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§ 588. To the extent of the amount of the indemnity the State has a subrogated right against all those whose actions or omissions have contributed to the facts making the indemnity payable.

Against the judge, court officials, or public prosecutor the State has a subrogated right only in case it is legally established that their actions or omissions which served to bring about the indemnity may be regarded as an official breach of duty or a punishable act. * * *

§ 589. He who by false complaint or false testimony, or a public officer who has wrongfully brought about the arrest, detention or conviction of another, owes full indemnity for all injuries to property which the convicted or detained person has suffered in so far as the claim for indemnity is established (§ 587), and the damage *exceeds* the sums awarded in accordance with § 580.

A person having a right to this indemnity may instead of the indemnity demand smart-money up to the amount of 2,000 kroners, which amount the court at its discretion may fix.

Germany—Law of May 20, 1898, Concerning Indemnity for Persons Acquitted on New Hearing or Retrial. *Reichsgesetzblatt*, p. 345.

§ 1. Persons who are acquitted on a new trial, or by the application of a milder penal law, have a lighter sentence imposed, may demand indemnity from the Treasury if the earlier penalty has been executed in whole or in part against them. The new trial must establish the innocence of the convicted person of the deed charged to him, or with respect to the circumstance justifying the application of a greater penalty, or it must show that a well-founded suspicion no longer exists against the accused.

Besides the convicted person those who are legally dependent upon him for support have a claim to the indemnity.

The claim to indemnity is not permissible when the convicted person has intentionally or by gross negligence provoked the earlier conviction. Failure to note an appeal is not to be considered as negligence.

§ 2. The substance of the indemnity due to the accused is the pecuniary damage suffered by execution of the sentence. Those entitled to support have the right to compensation to the extent that they were deprived of support during the execution of the sentence.

§ 3. The indemnity is to be paid from the Treasury of that State of the Empire before whose court the criminal proceeding took place in first instance. Up to the amount of the indemnity thus paid, the Treasury is subrogated to the rights which the accused had against third persons, because their unlawful transactions led to his conviction.

§ 4. With reference to the duty of the Treasury to award indemnity, the appellate court in which the new trial takes place issues a special decree.

The decree is to be drawn up by the court simultaneously with the judgment. It is not to be published, but it is to be served on the person. There is no appeal from the decree. It goes out of force if the judgment of acquittal is reversed.

§ 5. He who makes a claim on the basis of the decree awarding indemnity from the Treasury must bring his claim forward within three months after that decree has been served, by application to the public prosecutor. The application is to be handed to the superior court (*Landgericht*) in whose district the judgment was rendered. The highest administrative board of the State (*Landes-*

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justizverwaltung) decides on the application. The decision duly drawn up is to be served on the claimant according to the provisions of the code of civil procedure.

Against the decision appeal through legal channels is permissible. The complaint is to be brought within a period of three months after service of the decision. For the claim to indemnity the civil chamber of the superior court (*Landgericht*) has exclusive jurisdiction without regard to the value of the matter in litigation. Until the final decision on the claimant's application the claim is not assignable or pledgeable.

§ 6. For such matters as in first instance are within the jurisdiction of the Supreme Court, the Treasury of the Empire is chargeable with the indemnity instead of the State Treasuries. In these cases instead of the public prosecutor of the superior court, the public prosecutor of the Supreme Court is substituted, and in place of the highest authorities of the State administration, the Imperial Chancellor is substituted.

Germany—Law of July 14, 1904, concerning indemnity for unjust detention pending trial. *Reichsgesetzblatt*, page 321.

§ 1. Persons who are acquitted in criminal proceedings or who are discharged from prosecution by decree of the court, may demand indemnity from the State Treasury if the proceedings have shown their innocence or shown that no well-founded suspicion lies against them. Besides the arrested person those whom he has legally to support have a claim for indemnity.

§ 2. The claim to indemnity is not permissible if the arrested person has intentionally or by gross negligence caused his detention. The failure to note an appeal is not to be considered as negligence.

The claim may be rejected if the act of the accused subjected to examination involves an infamous or immoral act, or was committed during a state of drunkenness which excluded the exercise of free will, or when it appears from the circumstances that the accused had prepared to commit a felony or lesser crime.

The claim may also be rejected if the accused at the time of his arrest is not in possession of his civic rights, or was under police surveillance, or when on the basis of sections 181a and 362 of the penal code, he was placed within the last two years under the surveillance of the police authorities. The same is true if the accused has been punished by sentence to the penitentiary and since the expiration of the sentence three years have not yet elapsed.

§ 3. The substance of the indemnity paid the arrested person is the pecuniary damage suffered by his detention. If, before the issuance of the order of detention, an arraignment or preliminary arrest has taken place, the claim for indemnity will include the period of arrest preceding the issuance of the order of detention.

Those entitled to support are to receive indemnity to the extent that they were deprived of support by reason of the detention.

§ 4. On the duty of the Treasury to make compensation a special decree is drawn up by the court at the same time as it hands down the judgment of acquittal. If on appeal from the judgment acquittal is decided anew the appellate court must draw up a new decree on the indemnity.

The decree is not to be published, but is to be notified by personal service as soon as the decree of acquittal has secured legal force. It can not be ap-

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pealed from. If the duty of the Treasury to make indemnity is recognized the decree is also to be notified to those entitled to support who are not in the household of the accused, in so far as their residence is known.

These provisions are equally applicable when the arrested person by order of the court is released from prosecution.

§ 5. The decree holding the State responsible for indemnity loses its force when a new trial is ordered to the disadvantage of the acquitted prisoner, or when the complaint in the principal action is reopened against the prisoner against whom prosecution had been discontinued. If the indemnity has already been paid it may be demanded back by the State.

§ 6. He who brings a claim on the basis of a decree holding the State liable to indemnity must prosecute his claim within six months after service of the decree, by application to the district attorney of the superior court within whose circuit the proceedings in first instance took place. The highest administrative board of the State decides on the application. Its findings regularly drawn up are to be served upon the claimant in accordance with the provisions of the code of civil procedure.

Appeal against such decision is permissible through the legal channels. The complaint is to be brought within three months of the service of the administrative decision. For these actions the civil chambers of the superior courts have exclusive jurisdiction regardless of the amount of the matter in litigation. Up to the time the administrative decision takes effect legally the claim is not assignable.

§ 7. The indemnity is paid out of the Treasury of the State of the Empire within whose court the criminal proceedings in first instance took place. Up to the amount of the indemnity paid, the Treasury is subrogated to the rights which the indemnified person had against third persons, because by their illegal acts they led to his detention.

§ 8. If a new trial decides against the acquitted person, or the complaint against a person against whom prosecution has been discontinued is again taken up, the decision of the administrative authorities, as well as the payment of indemnity may be suspended.

§ 9. In matters within the jurisdiction of the Supreme Court in first instance the Imperial Treasury is substituted for the State Treasury.

In this case in place of the public prosecutor of the superior court, the public prosecutor of the Supreme Court is substituted, and in place of the highest state administrative authorities the Imperial Chancellor is substituted.

§ 10. This law applies equally to persons acquitted in proceedings in military courts. * * *

§ 11. [It applies also to the consular courts].

§ 12. The provisions of this law are applied to the nationals of a foreign state only to the extent that by the legislation of their state or by treaty duly published in the *Reichsgesetzblatt* reciprocity is accorded.

INSANITY AND CRIMINAL RESPONSIBILITY.

(Report of Committee B of the Institute.¹)

Edwin R. Keedy (professor of law in Northwestern University), *Chairman*.
Adolf Meyer (professor of psychiatry in Johns Hopkins University), Baltimore.

Harold N. Moyer (physician), Chicago.

W. A. White (superintendent Government Hospital for the Insane), Washington.

William E. Mikell (professor of law in University of Pennsylvania), Philadelphia.

Albert C. Barnes (judge of the Superior Court), Chicago.

Walter Wheeler Cook (professor of law in University of Chicago).

Archibald Church (professor of nervous and mental diseases and medical jurisprudence in Northwestern University), Chicago.

Morton Prince (physician), Boston.

William S. Forrest (lawyer), Chicago.

EDWIN R. KEEDY (CHAIRMAN).

In the first report of this committee, which was presented to the Institute at the meeting in Boston on Sept. 1, 1911, there was a discussion of the following topics: (1) the general relation of mental disease to criminal responsibility; (2) the function of the judge, the medical witness and the jury at the trial; (3) the qualifications of medical witnesses; (4) the form of the jury's verdict where insanity is set up as a defense; (5) the English statute regarding the form of the verdict and the confinement of the person found to be a lunatic; and (6) the report of the special committee of the New York State Bar Association. After establishing the propositions: (1) *that one who, by reason of his insanity, did not have the necessary criminal intent at the time of the commission of a wrong within the province of the criminal law, should not be convicted or punished*; (2) *that one, who by reason of his insanity is a menace to the safety or health of the public, should be confined for purposes of restraint and treatment, such confinement to end whenever, if at all, he regains his normal mental condition, and not before*—the enactment of the following statute was recommended:

(1) Where in any indictment or information any act or omission is charged against any person as an offense, and it is given in evidence on the trial of such person for that offense that he was insane so as not to be responsible according to law for his actions, at the time when the act was done or omission made, then if it appears to the jury before whom such person is tried, that he did the act or made the omission charged, but by reason of his insanity was not responsible according to law, the jury shall return a special verdict that the accused committed the act or made the omission charged against him, but was not responsible according to law, by reason of his insanity, at the time when he did the act or made the omission.

(2) When such special verdict is found, the court shall remand the prisoner to the custody of the proper officer and shall immediately order an inquisition by the proper persons to determine whether the prisoner is now insane so as to

¹Second report.

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be a menace to the public health or safety. If the persons who conduct the inquisition so find, then the judge shall order that such insane person be committed to the state hospital for the insane, to be confined there until in the opinion of the proper authorities he has recovered his sanity and may be safely dismissed from the said hospital. If the members of the inquisition find that the prisoner is not insane as aforesaid, then he shall be discharged from custody.

(3) When an insane person shall have been committed to the state hospital for the insane in accordance with the provisions of the preceding section, no judge of competent jurisdiction shall issue a writ of habeas corpus for the release of such person on the grounds that he is no longer insane, unless the petitioner for such writ presents sufficient evidence to establish a *prima facie* case of sanity on the part of the person confined as aforesaid. Or,

(4) When an insane person shall have been committed to the state hospital for the insane in accordance with the provisions of the preceding section and a writ of habeas corpus has issued for the release of such person, upon the hearing of which writ such person has not been released from confinement, then no judge of competent jurisdiction shall issue a writ of habeas corpus for the release of such person on the ground that he is no longer insane, unless the petitioner for such writ presents to the judge as aforesaid evidence sufficient to show that the mental condition of the person confined has improved since the hearing upon the first writ, so as to render it probable that he is sufficiently sane to justify his release from the asylum.

The report was favorably discussed at the meeting of the Institute and in the public press. Certain suggestions for the improvement of the proposed statute have been made, and some of them have been adopted. As a result of criticism and further consideration the proposed statute has been amended as follows:

Sec. 1. No person, suffering from mental disease, shall hereafter be convicted of any criminal charge, when at the time of the act or omission alleged against him, he did not have, by reason of such mental disease or derangement, the particular state of mind which must accompany such act or omission in order to constitute the crime charged.

Sec. 2. Where in any indictment or information any act or omission is charged against any person as an offense, and it is given in evidence on the trial of such person for that offense that he was mentally diseased so as not to be responsible, according to the preceding section, for his acts or omissions, at the time when the act or omission charged was made, then if it appears to the jury before whom such person is tried, that he did the act or made the omission charged, but by reason of his mental disease was not responsible according to the preceding section, the jury shall return a special verdict that the accused did the act or made the omission charged against him but was not legally responsible, by reason of his mental disease, at the time he did the act or made the omission.

Sec. 3. When such special verdict is found, the court shall remand the prisoner to the custody of the proper officer and shall immediately order an inquisition by the proper persons^{1/2} to determine whether the prisoner is now suffering from such a mental disease as to be a

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menace to the public health or safety. If the members of the inquisition^{1½} find that such person is a public menace, then the judge shall order that such mentally diseased person be committed to the state hospital for the insane, to be confined there until he shall have fully recovered from such mental disease. If the jury find that the prisoner is not suffering from a mental disease as aforesaid, then he shall be immediately discharged from custody.

Sec. 4. When a person suffering from a mental disease shall have been committed to the state hospital for the insane in accordance with the provisions of the preceding section, no writ of habeas corpus shall be issued for the release of such person on the ground that he is no longer mentally diseased, unless the petitioner for such writ presents sufficient evidence to establish a *prima facie* case of mental soundness on the part of the person confined as aforesaid.

Sec. 5. An appeal from a final order, discharging a person committed to a state hospital for the insane in accordance with section three (3) of this act, may be taken in the name of the state by the attorney-general or the district attorney.

In those states where no statutory provision is made for the release by habeas corpus of persons confined in the state hospital for the insane on the ground that they are no longer mentally diseased, a method of release such as is provided in a Wisconsin statute would prove satisfactory in practice. Following is the Wisconsin statute:

"Upon the receipt by the judge of the circuit court or any judge of any other court of record of the county in which any insane person is confined, or the county from which he was committed, of a petition verified by the oaths of any resident of the county wherein such circuit judge holds court or in which such other judge resides, setting forth that the person in whose behalf the petition is filed has theretofore been adjudged insane and alleging that such person is now believed by petitioner to be sane and requesting a judicial examination as to that fact, and further stating whether or not such person has a general guardian, and if he has, the name and residence of such guardian, such judge shall by order appoint two disinterested physicians, of good repute and *residents of the county*, to examine and report to him whether in their opinion the person named in such petition is sane or insane. If such person has such a guardian the judge shall at the time he appoints such physicians, cause notice of the time and place of making such examination to be served upon him, and such general guardian or any relative or friend of the person to be examined may appear at such examination. If such physicians report such person sane and the judge is satisfied that he is sane and no demand for a jury trial is made, a judgment to that effect shall forthwith be entered; but if the judge shall direct, or the person examined, his guardian or any of such person's friends or relatives shall demand, a trial by jury, an order for such a trial shall forthwith be entered. After hearing the evidence and arguments the jury shall return a verdict of sane or insane as they agree; if they disagree they shall be discharged and another

^{1½}The members of the committee are at present not in agreement regarding the personnel of the body which shall conduct this inquisition. Some favor a jury, others a commission composed of physicians. It is hoped that the question can be settled before the next report.

jury may be impaneled. Judgment shall be entered in accordance with the fact found by the jury; if they find that the person is insane the judge shall make a further order of commitment to some hospital or asylum, or not, as in his judgment the facts warrant."²

Section 1 is inserted for the purpose of securing the specific enactment of what is deemed the proper test for determining the criminal responsibility of a mentally diseased person, and also to insure the proper interpretation of section 2. The need for the latter was well stated by a critic of the section: "Having in mind the reluctance of courts in the application of statutes to depart from established law except where such departure is made mandatory by the express language of the statute, it is likely that most courts would interpret the proposed legislation in such a way as to give the phrase used in the statute not responsible according to law, the meaning *not responsible according to existing law*, and thus perpetuate the existing legal tests of insanity. The effect of this interpretation of section 1 would be merely to authorize the statutory forms of insanity as they exist in the jurisdiction adopting the statute. The history of all reform legislation is that courts are tenacious of established common law principles, and generally they interpret the legislation so as to disturb established principles as little as possible. The reform proposed by this report is far-reaching, and will only be secured in its entirety by legislation, the meaning of which is unmistakable."

In section 2 "insane" is changed to "mentally diseased." The term "insanity" is misleading and has been repudiated by the medical profession. One physician writes: "I am getting so that I no longer use the word 'insanity' at all. I have come to the conclusion that 'insanity' has no scientific applicability whatever, but is after all a legal term." It is most desirable that any new legislation on this most complex subject should be free from misleading and ambiguous terms. Section 2 was amended also so as to refer directly to section 1 for the test of responsibility.

Section 3 (section 2 of the original draft) is presented again for discussion in rather indefinite form, since the members of the committee are not in agreement regarding this provision. A minority view is that the question of the defendant's present mental condition should be determined in the same proceeding in which his mental condition at the time of the commission of the wrongful act is considered. Those members of the committee who favor a separate inquiry into his present mental condition disagree as to the persons who shall conduct this inquiry.

²Wis. Stat. 1898, sec. 587. This statute should be amended by striking out the phrase "residents of the county," as it is unwise to limit the choice of the judge to local physicians.

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Some favor a jury, others a commission of physicians. It is necessary that this question be considered further.

Section 4 (the first alternative of section 3 of the original draft) is presented for further consideration. The provision is not in conflict with the present law in some states and, if properly administered, would tend to discourage improper or unfounded petitions for the writ. Several members of the committee, however, are of the opinion that a *prima facie* case of mental soundness should not be required to be made out before the writ is issued. One member writes: "It seems to me that what is wanted is enough evidence to satisfy the judge of the necessity of an inquiry." Another member of the committee writes the following: "I further suggest that great injustice will result from the adoption of this section. How can a person, confined in a state hospital for the insane, procure evidence to establish a *prima facie* case of sanity without getting the officials in charge of the state hospital for the insane to give such evidence? It seems to me that the effect of section 4 will be to detain for life a person confined in the state hospital for the insane, as provided in section 3, unless the physicians in charge of the state hospital for the insane are willing to furnish evidence that the person has ceased to be insane."

The second alternative of section 3 of the former draft is not recommended again. It made too much depend on the decision of the judge on the first writ of habeas corpus.

Section 5 is recommended for the first time. Statutes providing for appeal by the state in habeas corpus cases exist in some states, section 5 as proposed being modeled after section 2059 of the New York Code of Civil Procedure, which reads:

"An appeal from a final order, discharging a prisoner committed upon a criminal accusation, or from the affirmance of such an order may be taken in the name of the people by the attorney-general or the district-attorney."

Sections 4 and 5 should so regulate release on habeas corpus so as to remove most of the objections to the present practice.

In January, 1911, a committee of the New York State Bar Association recommended for consideration the following:

"If, upon the trial of any person accused of any offense, it appears to the jury upon the evidence that such person did the act charged, but was at the time insane, so as not to be responsible for his actions, the jury shall return a special verdict, 'guilty, but insane,' and thereupon the court shall sentence such person to confinement in a state asylum for the criminal insane for such term as he would have had to serve in prison, but for the finding of insanity; and if upon the expiration of such term it shall appear to the court that such person is still insane, his confinement in such asylum shall continue during his insanity; and, further, when such a verdict of 'guilty, but insane,' is returned in a case where

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the penalty for the verdict of guilty against a sane person is death, such sentence for the insane person thus found guilty shall be for life; and in all such cases the governor shall have the power to pardon, after such inquiry as he may see fit to institute upon the question whether it will be safe for the public to allow such person to go at large."

This recommendation was adversely criticised in the first report of this committee on the grounds: (1) that "guilty" and "insane" in the verdict proposed are contradictory; (2) that it makes insanity at the time of the commission of the act, regardless of the mental condition of the prisoner at the time of the trial, the basis for confinement in the state asylum; and (3) that the proposal merely substitutes imprisonment in the asylum for imprisonment in the penitentiary.

In a report presented on January 19th, 1912, the New York committee replied to these criticisms. The gist of this reply may be found in the following paragraph from their report:

"A verdict of 'guilty, but insane' does not negative the idea that a crime was committed; on the contrary, it expressly finds that it was. The hypothesis is not that the defendant is not insane; on the contrary, it expressly finds that he was insane at the time of the commission of the act, and the presumption of a continuance of that insanity applies. True, the defendant may have regained his sanity—if he ever had it—but the theory on which such verdict is based is, that no man whose insanity has resulted in an act dangerous to the community, should be permitted to go free and thereby endanger the community anew, merely because he happens to be sane at the time of the trial. Society has the right to protect itself against proved homicidal impulses, which may again result in the taking of human life. He who has demonstrated that he is incapable of controlling such impulses has, it may be urged, by that act alone forfeited his right to freedom, and should thereafter enjoy freedom only as an act of mercy, and not as of right."³

Two very significant conclusions may be drawn from this paragraph. The first of these is that the New York committee is confining the application of their proposed statute to the case of a person who kills as the result of a homicidal impulse. The second conclusion is that the committee's purpose is to declare that killing as a result of a homicidal impulse is a crime, and that the punishment for such crime shall be confinement in an asylum.

That the first conclusion is correct may be shown further by the following additional quotations from the report:

"But if they find that he had the intent, let them convict, and if they also find that he was insane at the time, but that his insanity was not of a character to affect his intent, but only to impair his self-control, let them add, that he was insane."⁴

"If such a man had never displayed any homicidal tendencies, then of course it would be an injustice, for which no one would contend."⁵

"But if you can impute to them intent to do the act which they did do, and

³P. 5.

⁴P. 8.

⁵P. 12.

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if that act is one which is dangerous to the community, and is of such a character that its repetition may be reasonably expected, whenever the temptation arises, wherein lies any injustice in keeping them where their homicidal tendencies cannot be given full sway?"⁶

The proposed statute by its terms is much broader than the restricted interpretation put upon it by the committee. It covers "any offense" and any person "insane, so as not to be responsible for his actions." The New York committee recognizes in their second report that a person who by reason of mental disease does not have the necessary criminal intent or guilty state of mind (*mens rea*) should be acquitted. "If a jury finds in a given case of homicide, that there was no deliberate intent to kill it may acquit or find a less degree."⁷ "Now, if on all the evidence, a jury finds that the prisoner, whether sane or insane, had no such intent, let them acquit"⁸ Such a case, however, would be covered by the statute proposed. Apart from the inconsistency between the statute proposed and the interpretation of the committee, the interpretation is unsatisfactory. A provision that such a person shall be acquitted does not solve the problem. If the person is still mentally diseased so as to be a menace to the public health or safety he should be confined.

To support the second conclusion regarding the interpretation to be put upon their statute by the New York committee a further quotation from their report follows:

"Perhaps he may not be criminally responsible under existing statutes, but our suggestion is that there shall be a statutory amendment, making him criminally responsible, and then providing that his incarceration shall be in an asylum, rather than in a jail, so that he shall have the proper medical treatment."⁹

Under the New York law as it now stands no statute is necessary to secure the conviction of a person who kills while suffering from a homicidal impulse. The only change that the proposed act, as interpreted by the committee, would have on the present law of New York would be to substitute confinement in an asylum for death or imprisonment in a penitentiary as a punishment for one who kills as a result of a homicidal impulse. In states where an irresistible impulse is a defense to a criminal charge, the proposed act, as interpreted, would create a new crime, viz: homicide by one suffering from an impulse to kill. Even if it be assumed that it is desirable to accomplish the result contended for in the report of the New York committee, it is submitted that this should

⁶P. 13.

⁷P. 6.

⁸P. 8.

⁹P. 9.

be done by a statute, which provides in specific terms for such a case, and not by a statute, as the one proposed, which by its terms covers every sort of crime and every form of mental disease.

The New York committee is confused in its discussion of insanity and the effect of this upon the criminal intent. On page 6 it is stated: "The trouble is that it has always been assumed that an insane man cannot have any intent, whereas experience has shown the reverse." It may well be questioned whether there has been such a general assumption. The cases in which mentally diseased persons have been convicted of crimes indicate that such persons were regarded as having the necessary criminal intent. Physicians have recognized for many years that the persons suffering from certain forms of mental disease may intend their acts in the same way that a person of sound mind does. Again on page 7 the committee says:

"The difficulty is that we have been wrong, not in our definitions of crime, but in our judge-made definitions of insanity. When in England 'all the judges' laid down the rule of knowledge of right and wrong in the *McNaughton* [*McNaghten*] case, they did so not by reason of their learning in the law, but because of their ignorance of psychology. It has had such an advance of late years, that we have learned that the trouble with the men, whom we have come to call the criminal insane—a contradiction in terms under present definitions—the trouble is, not absence of intent, but of control."

The concluding sentence of the above statement is too broad in that no distinction is made between the different symptoms of mental disease. An insane delusion, for instance, may indicate the absence of criminal intent (*mens rea*).

It is not the desire of this committee to engage in an academic debate with the New York committee, nor to indulge in captious and unimportant criticism. However, since the purpose of each committee is to reach a proper solution of the problem of dealing with persons suffering from mental disease who are charged with crime, a comparison of the two plans proposed and the contemplated results of each is deemed desirable. On many points the two committees are in agreement. Both committees favor overthrowing the legal insanity test of *M'Naghten's* case; both wish to secure the conviction and punishment of persons who are relying upon feigned insanity as a defense; and both urge confinement in a hospital for persons who by reason of their mental condition are a public menace. This committee deems it of great importance that any new legislation should provide for the proper disposition of all cases, no matter what the character of the offense nor the symptoms of mental derangement. This defense is by no means confined to prosecutions for homicide. Following are some of the crimes of which defendants have been convicted when mental disease was set up as a

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defense; rape,¹⁰ burglary,¹¹ forgery,¹² running illicit distillery,¹³ larceny,¹⁴ mailing obscene literature,¹⁵ writing forged instruments,¹⁶ abduction,¹⁷ arson,¹⁸ embezzlement,¹⁹ robbery,²⁰ slander,²¹ and incest.²² The statute proposed by this committee would cover all these, no matter what the character of the mental disease, because the statute is based on the proper relation of mental disease to criminal responsibility. In addition to declaring a test for determining what treatment, whether penal or remedial, shall be accorded a person who commits a wrong while suffering from a mental disease, the proposed statute provides a method, which it is believed will be effective, for securing the proper release and preventing the improper release of persons who have been confined because of their unsound mental condition. The proposals are, however, presented tentatively, and further consideration and criticism of them are desired.

¹⁰*Bothwell v. State*, 71 Neb. 747 (1904); *State v. Miller*, 111 Mo. 542 (1892).

¹¹*Hays v. Commonwealth*, 33 S. W. R. (Kan.), 1104 (1896).

¹²*Langdon v. People*, 133 Ill. 382 (1890).

¹³*U. S. v. Ridgeway*, 31 Fed. 144 (1887).

¹⁴*Gruber v. State*, 3 W. Va. 699 (1869); *People v. Cummins*, 47 Mich. 344 (1882).

¹⁵*U. S. v. Faulkner*, 35 Fed. S. 730 (1888).

¹⁶*Riley v. State*, 44 S. W. R. (Tex. C. A.) 498 (1898).

¹⁷*Walker v. People*, 26 Hun. 67 (1881).

¹⁸*Knights v. State*, 58 Neb. 225 (1899); *State v. Richards*, 39 Conn. 591 (1873).

¹⁹*U. S. v. Chisholm*, 153 Fed. R. 808 (1907); *State v. Berry*, 179 Mo. 377 (1904); *U. S. v. Young*, 25 Fed. R. 710 (1885).

²⁰*People v. Sprague*, 2 Parker Cr. Rep. (N. Y.) 43 (1849); *People v. Ford*, 138 Cal. 140 (1902).

²¹*Kelley v. State*, 101 S. W. R. (Tex. C. A.) 230 (1907).

²²*Schwartz v. State*, 65 Neb. 196 (1902).

CRIMINAL PROCEDURE IN SCOTLAND.

EDWIN R. KEEDY,
Northwestern University.

Introduction.

When the writer of this report was in England two years ago as a member of the committee sent to investigate the administration of the criminal law there, he was advised by Earl Loreburn, then Lord Chancellor, to make a study of the Scottish system. In the spring of 1912 the president of the American Institute of Criminal Law and Criminology commissioned the writer to make this study. The mission was endorsed by President Taft and the Attorney General, who provided the writer with letters of introduction. Two months were spent in attendance at the following courts in Scotland: The High Court of Justiciary at Edinburgh and on circuit at Glasgow, Aberdeen and Dumfries; the sheriff courts at Edinburgh and Glasgow; and the police courts of those cities. Many courtesies were shown the writer by the judges, lawyers and other officials, from whom he received much information regarding the procedure and practice. To Lord Dunedin, the Lord Justice-General, and Lord Kingsburgh, the Lord Justice-Clerk, the writer is particularly indebted.

Before commencing a detailed discussion of the criminal procedure it is advisable to present briefly a short sketch of the origin and historical development of Scottish law. Before the sixteenth century the laws of Scotland and England were practically identical, in each country being derived from the Anglo-Saxon and Norman inhabitants. Though the Celts formed a considerable portion of the population of Scotland, they left practically no trace in the law.

In the sixteenth century the jurisprudence of Scotland was largely changed by the introduction of Roman law, which accompanied the general revival of learning in Europe. At this time a great many of the Scottish lawyers received their training in continental universities. So strong was the Roman influence during the reign of James V. that he ordained that no man should succeed to high estate who did not understand the Civil Law. The Court of Session which was established during the reign of this king was modeled after the Parliament of Paris. The extent of the influence of the Roman law during the seventeenth century may be shown by a quotation from Sir George Mackenzie's commentary

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on the criminal law:¹ "We follow the Civil Law in judging crimes, as is clear by several Acts of Parliament, wherein the Civil Law is called the Common Law. * * * And though the Romans had some Customs or Forms peculiar to the Genius of their own Nation: Yet their Laws, in Criminal Cases, are of universal use, for crimes are the same almost everywhere." Baron Hume, the leading commentator on Scottish criminal law, whose commentaries were published in 1797, regarded the Roman influence as being less extensive than set forth by Mackenzie. Hume said the influence was greater in the civil than in the criminal department, and said further: "Our whole judicial establishment and modes of trial are utterly remote from anything that was known among the Romans." These institutions, at that time, were, however, very similar to those in France.

By the treaty of union between Scotland and England in 1706, the Scottish laws and the jurisdiction of the Scottish courts were preserved, subject to change by Parliament. With few exceptions all the changes that have been made in the criminal law have been by special acts of Parliament, applicable only to Scotland. There has been very little general legislation in criminal matters. This fact, coupled with the further one that the Scottish decisions in criminal cases are not reviewable by the House of Lords, indicates the independent character of the Scottish criminal procedure, of which independence the people of that country are very proud. Though the Scottish law in civil cases, particularly the mercantile law, has by statute and decision been brought nearer to the English law, yet there is to-day no appreciable similarity between the two systems of criminal procedure. In England there is little knowledge of the Scottish law, and in Scotland general legislation applicable to the two kingdoms is not received with favor.

Towards the development of the law there has been somewhat the same attitude in this country as in Scotland. Professor J. Dove Wilson in an article in the *Juridical Review* says the following: "But when it came to speculation and to consequent free examination in search of what was best, the attention of the Americans could not be confined to such law as they had inherited."¹⁴ At the present, perhaps more than

¹The following treatises on Scottish criminal law and procedure were consulted in the preparation of this report:

Mackenzie, The Laws and Customs of Scotland in Matters Criminal (1678).

Hume, Commentaries on the Law of Scotland respecting Crimes (1797).

Burnett, Criminal Law of Scotland (1811).

Alison, Principles and Practice of the Criminal Law of Scotland (1831).

Macdonald, Criminal Law of Scotland (3rd ed. 1894).

Angus, Dictionary of Crimes and Offenses (1895).

Anderson, Criminal Law of Scotland (1904).

at any former time, attention in this country is directed to the legal systems of other countries. This fact, of itself, justifies a presentation of the Scottish criminal procedure, and its administration.

COURTS AND THEIR JURISDICTION.

Criminal jurisdiction in Scotland is of two kinds—*solemn*, where the prosecution is by indictment, and the court sits with a jury; and *summary*, where the prosecution is by complaint, and the court sits without jury.

The Courts exercising original criminal jurisdiction are:

1. The *High Court of Justiciary*, exercising solemn jurisdiction only. There is no appeal from the judgments of this court.
2. The *sheriff courts*, which have both solemn and summary jurisdiction. The judgments of these courts are reviewable by the High Court of Justiciary.
3. The *justices of the peace, burgh, and police courts*, which have summary jurisdiction only. The judgments of these courts are reviewable on questions of law by the High Court of Justiciary. The decisions of the justices of the peace are subject to appeal, both on law and fact, to the quarter sessions.

1. *The High Court of Justiciary.*

The High Court of Justiciary, which is the Supreme Court for the trial of criminal causes, is composed of thirteen judges with the official title of Lords Commissioners of Justiciary. These judges also compose the Court of Session, which is the Supreme Court in civil matters. The president and vice-president of the High Court are the Lord Justice-General and the Lord Justice-Clerk respectively. The former of these is also Lord President of the Court of Session.

After the Norman conquest a great officer of state called the Justiciar had universal jurisdiction over all legal controversies, civil and criminal. By statute in 1532 during the reign of James V. jurisdiction in civil causes was taken away from the Justiciar and vested in a College of Justice or Court of Session.² Originally each Justiciar, or Lord Jus-

Renton and Brown, Criminal Procedure according to the Law of Scotland (1909).

Trotter, Summary Jurisdiction (Scotland) 1908 (1909).

¹½ "Historical Development of Scots Law," 8 Jurid. Rev. 217.

²"Because our Sovereigne Lord is maist desirous to have ane permanent ordour of Justice, for the universall weill of all his Lieges: And therefore tendis to institute one College of cunning and wise men, baith of Spiritual and Temporal Estate, for doing and administration of justice in all civil actions:

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tice-General as he was later called, was commissioned directly by the Crown, but about the middle of the sixteenth century the office was granted as a hereditary right to the head of the house of Argyle. In 1628 this right was by contract resigned into the hands of the King, who thereafter generally appointed some great noble to the post.

The Justiciar was assisted by several deputies appointed by himself. As the Justiciar and his deputies were generally noblemen, often with no legal learning, they were advised by a clerk, who was a trained lawyer. This clerk prepared all the indictments and was the keeper of the records. The influence of this clerk was naturally great, and it steadily increased until in the latter part of the seventeenth century he gained a vote, and then a seat on the bench of the Justiciary Court with the title Justice-Clerk. This advance was formally recognized by an act of Parliament in 1672, which provided that the Justiciary Court should consist of the Lord Justice General, the Justice Clerk and five of the judges of the Court of Session. The Lord Justice-General was made president of the Court, and the Justice-Clerk vice-president. During the period when the office of Lord Justice-General was held by successive noblemen the Lord Justice-Clerk was virtual head of the Justiciary Court. In 1830 the office of Lord Justice-General was united with that of the Lord President of the Court of Session,³ and in 1887 all the judges of the Court of Session were made Commissioners of Justiciary.⁴

The judges of the High Court of Justiciary are appointed by the Crown on the recommendation of the Lord Advocate. When a vacancy occurs the Lord Advocate by custom may accept the commission. This he is not likely to do unless it is the position of Lord Justice-General or Lord Justice-Clerk that is vacant. If the Lord Advocate does not accept the appointment, he often recommends the solicitor-general. In most cases the judges before appointment have had an extensive experience at the bar or on an inferior bench, or both.⁵

Upon the appointment of a new judge his commission is read by the clerk to the assembled court, after which the Lord Justice-General directs

And therefore thinkis to be chosen certaine persones maist convenient, and qualified therefore, to the number of fourteene persones, halfe Spiritual, halfe Temporal, with one President: The quhilkis persones sall be authorized in this present Parliament to sit and decide upon all actions civil and nane uthers to have vote with them, until the time the said College may be institute at mair leasure."

³11 Geo. IV and 1 Gul. IV, c. 69, s. 18.

⁴50 and 51 Vict. c. 35, s. 44.

⁵The present Lord Justice General (Lord Dunedin) was successively advocate depute, sheriff of Perthshire, solicitor general and Lord Advocate. The Lord Justice Clerk (Lord Kingsburgh) was successively sheriff of Ross, Cromarty and Sutherland, solicitor general, sheriff of Perthshire and Lord Advocate.

that he shall undergo a probation. He is directed to sit in different kinds of cases along with another judge. After a satisfactory report regarding his ability to preside in these cases, he is received as a member of the court.

The salaries of the Justiciary judges are as follows: Lord Justice-General, 5,000 pounds a year; the Lord Justice-Clerk, 4,800 pounds a year; and each of the other judges, 3,600 pounds a year.⁶

The High Court of Justiciary exercises original jurisdiction over all offenses for which the punishment may be death, penal servitude or imprisonment for more than two years.⁷ The court sits at Edinburgh and on circuit⁸ in the principal cities and towns of the Kingdom.⁹ The times for holding the various circuits are fixed by Acts of Adjournal¹⁰ passed by the court. Extra sittings may be had, if necessary, upon the requisition of the Lord Advocate. For many years it was customary in each trial at Edinburgh for three judges to sit, and on circuit for two, but now a single judge sits in all cases.

The sessions of the High Court in Edinburgh are held in the old Parliament House, described by Scott in the "Heart of Midlothian." It was formerly the custom to open the court with great ceremony, "fencing the court," but this is now abolished.

The High Court of Justiciary has a broad common law power to declare and punish new crimes, there being no rule against *ex post facto* laws. Hume says: "Our Supreme Courts have an inherent power as such competently to punish (with the exception of life and limb) every act which is obviously of a criminal nature; though it be such which in time past has never been the subject of prosecution."¹¹ Alison in his Principles says: "By the common law every new crime, as it successively arises, becomes the object of punishment provided it be in itself wrong, and hurtful to the persons or property of others."¹² The difference between the common law powers of the Scottish court and those of the

⁶Crim. Proced. (Scotland) Act, 1887 (50 and 51 Vict. c. 35), s. 45.

⁷The theoretical jurisdiction of the Court is broader. Hume says: "In point of extent, its jurisdiction in the trial of crimes may be said to be almost universal. It is hardly subject to any limitations, with respect to the magnitude of the cause of complaint; and is open alike for the trial of the highest crimes and the more venial offenses" (Vol. II, p. 31).

⁸The Act of 1887 provides that every sitting of the Justiciary Court on circuit shall be a sitting of the High Court of Justiciary. 50 and 51 Vict. c. 35, s. 44.

⁹There are three circuits: North, South and West.

¹⁰The judges of High Court of Justiciary have the power to enact rules governing the procedure in that court and inferior courts. Such enactments are called Acts of Adjournal.

¹¹Vol. I, p. 12.

¹²P. 624.

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English courts, which do not generally extend beyond the case of misdemeanors, may be well shown by the following cases. In England in 1822, the question arose whether it was rape to obtain connection with a married woman by impersonating her husband. The court held eight to four that it was not,¹³ and it required a statute to make this particular act criminal. A similar case in 1838 came before Gurney, B., in *Regina v. Saunders*¹⁴ who said to the jury: "Before the passing of a very recent statute I should have had to direct you to find a general verdict of acquittal." He further says, "although in point of law this was not a rape, I consider it one of the most abominable offenses that can be committed," yet he had no common law power to punish it. When a similar case arose in Scotland the court without hesitation pronounced the act criminal and punished the offender. In Fraser's case¹⁵ in 1847 the accused was indicted for (1) rape, (2) assault committed with intent to ravish, and (3) fraudulently and deceitfully obtaining access to and having carnal relations with a married woman. The court rejected the first two charges, but held that the third was good, and the accused was convicted and sentenced to 20 years' transportation. In a similar case¹⁶ in 1858 the Court said: "If it does not amount to rape and to no other nominate offense, it is an offense *per se*."

Embezzlement, obtaining property by false pretenses, and other fraudulent dealings with property, which in England and this country are criminal only by statute, are common law crimes in Scotland, under the names of "breach of trust" and "falsehood and fraud," respectively. This common law power of the courts is said by Hume to be advantageous for the following reasons: "Because all statutes are liable to be partial and defective in their description of new offenses; and thus the transgressor finds the means of eluding the sanction, and the law itself falls into contempt. But it is also a merciful course to the offender: Because the crime being censured on its first appearance and before it has become flagrant or alarming to the community, is restrained at that season by far milder corrections, than are afterwards necessary to be applied to it, when the growing evil has come to require the passing of an express law in that behalf."¹⁷ The present Lord Justice-General said this power of the court must be exercised with a wise discretion. If the court should go too far in declaring acts hitherto lawful to be crimes, the effect of the

¹³*Rev. v. Jackson*, Russ & Ry. 487.

¹⁴8 C. & P. 226.

¹⁵Arkley 280.

¹⁶Sweeney, 3 Irv. 109.

¹⁷Vol. I, p. 12.

decision would be counteracted by the Secretary for Scotland, who on behalf of the Crown would exercise the pardoning power.

There is no appeal from a judgment or sentence of the High Court, but the court exercises appellate jurisdiction over the other courts, three judges constituting a quorum.

2. *The Sheriff Court.*

The office of sheriff was created by the King, during the early days of the Scottish monarchy, for the purpose of exercising and preserving his authority against the rival powers of the local lords. One of the most powerful of these in each county was generally persuaded to accept the appointment, which became hereditary in his family. The sheriff thus became the local representative of the King in all matters, judicial and administrative. The judicial functions were in time delegated by the hereditary sheriff to a depute who was a trained lawyer. The hereditary office was abolished by the Heritable Jurisdictions Act of 1747¹⁸ and the sheriff-depute soon became sheriff. By the Sheriff Court (Scotland) Act of 1870¹⁹ the thirty counties of Scotland were combined into fifteen sheriffdoms.

The sheriff, who is appointed for life by the Crown, on the recommendation of the Secretary for Scotland, continues to exercise both administrative and judicial functions. He is the chief official in the county and on formal occasions takes precedence of all except members of the royal family.

The qualification for the office is five years' standing as an advocate or sheriff-substitute.²⁰ With the exception of the sheriff of the Lothians and Peebles, who sits at Edinburgh, and the sheriff of Lanarkshire, who sits at Glasgow, the sheriff need not reside in his sheriffdom. He continues his practice before the High Court and Court of Session, going to the county when necessary to perform his various duties there. In the absence of the sheriff the judicial duties are performed by a sheriff-substitute, who is resident and local. He must be an advocate or law agent of five years' standing,²¹ and is not permitted to engage in any other business. Up to 1877 the sheriff-substitute was appointed and paid by the sheriff. Since then the appointment is by the Crown. The sheriff has the power of appointing certain honorary substitutes for the purpose of performing incidental and formal duties if the sheriff-substitute is com-

¹⁸20 Geo. II c. 43.

¹⁹33 and 34 Vict. c. 86.

²⁰Sheriff Court (Scotland) Act, 1907 (7 Edw. VII. c. 51), s. 12.

²¹Sheriff Court (Scotland) Act, 1907 (7 Edw. VII. c. 51), s. 12.

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pelled to be absent from the county. There are 5 sheriffs and 50 sheriff-substitutes. The sheriff at Edinburgh receives 1,800 pounds annually, and the sheriff at Glasgow 2,000 pounds. The salaries of the other sheriffs, who also practice, range from 700 pounds to 1,000 pounds.²²

The sheriff has both solemn and summary jurisdiction. In exercising the former the limit of his power to punish is imprisonment for two years. In summary cases, on convicting any person of a common law offense, he may impose a fine not exceeding twenty-five pounds, or may imprison with or without hard labor for a period not exceeding three months.²³

The sheriff has also the following power to punish :

"Where a person is charged with any offense inferring dishonest appropriation of property, or attempt thereat, aggravated by at least two previous convictions of any such offense, or where a person is charged with any offense inferring personal violence aggravated by at least two previous convictions of any such offense, he may on summary conviction by the sheriff, be sentenced to imprisonment for any period not exceeding six months with or without hard labour."²⁴

In practice most of the summary cases and many of the jury cases are tried by the sheriff-substitute. Besides the trial of cases it is the duty of the sheriff to grant warrants for apprehension and to commit for further examination or for trial where a case cannot be disposed of summarily. The arraignment of an accused on indictment and his plea thereto, whether the trial will be by the High Court or the sheriff is before the sheriff, such proceeding being known as the "first or pleading diet."

"The sheriff has a concurrent jurisdiction with every other court within his sheriffdom in regard to all offenses competent for trial in such courts."

3. *Justice of the Peace Courts.*

The office of justice of the peace was established in the reign of James V. to aid in preserving the King's peace within the counties. Formerly the justices were landed proprietors but by an act of Parliament in 1906²⁵ this qualification was abolished. No legal training is requisite for this office and no remuneration is received.

²²Sheriff Court (Scotland) Act, 1853 (16 and 17 Vict. c. 80), s. 37.

²³Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. VII. c. 65), sec. 11.

²⁴Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. VII. c. 65), s. 12.

²⁵Justices of the Peace Act, 1906 (5 and 6 Edw. VII. c. 16), s. 1.

Justices of the peace are appointed by the Crown and have jurisdiction at common law to try summarily petty crimes constituting a breach of the peace. They also exercise a summary jurisdiction under statutes of an administrative character pertaining to such matters as roads and licensing. In most cases two or more Justices sit. The decisions of the justices are subject to review both as to law and fact by the quarter sessions, composed of a full bench of Justices. Their decisions are also reviewable on questions of law by the High Court.

Burgh and Police Courts.

"The magistrates of every royal burgh have the care of the King's peace within their bounds; and repress, by suitable punishments, the inferior transgressors against the quiet, police, or good order of the town."²⁶ The magistrates, who are generally called "bailies," are elected by the town council from amongst their own number.²⁷

The jurisdiction of the magistrates within the burgh formerly corresponded to that of justices of the peace in the county. In 1892 a general police act for all cities in Scotland except Edinburgh, Glasgow, Aberdeen, Dundee and Greenoch (each of which cities has a special police act of its own) was passed.²⁸ By this act police courts were established in the burghs and the jurisdiction of the burgh courts was also regulated. The judges in the police court are past magistrates, i. e., they have held the office of magistrate and are still members of the town council. The magistrates and police judges are laymen and are advised on ordinary points of law by the clerk. If a question of law arises which cannot readily be settled by the clerk, an official called the legal assessor is called in. He is an advocate who has the duty *inter alia* of advising the magistrates and police judges in legal matters. The police judges rotate, each one generally serving for a period of two weeks. In Glasgow there is a permanent stipendiary magistrate, an advocate, who acts as police judge, and devotes all his time to the duties of his office. This is preferable to the system of lay magistrates. Certain confusion arises from the lack of legal knowledge on the part of such magistrates; and from the fact of the constant change in the occupants of the bench, it is impossible to have a permanent policy with reference to the conviction and punishment of the offenses coming within their jurisdiction. For instance, a particular magistrate in one of the large cities will not convict a prostitute on the charge of importuning without the testimony of the person importuned. His successor on the bench convicts on the tes-

²⁶Hume, Vol. II, 270.

²⁷Town Councils (Scotland) Act, 1900 (63 and 64 Vict. c. 49), s. 56.

²⁸Burgh Police (Scotland) Act, 1892 (55 and 56 Vict. c. 55).

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timony of the police who observed the importuning. Since it is difficult to obtain the testimony of the person who has been importuned, the police make no arrests for this offense during the sitting of the first magistrate, but the arrests are frequent when the second presides. The punishment imposed by the different magistrates for this offense also varies considerably.

THE LEGAL PROFESSION.

There are two classes of lawyers, advocates and law agents. The advocates, as the name indicates, are those who plead before the court in the trial cases. An advocate may plead in any court in Scotland, and is the only one entitled to appear in the High Court of Justiciary and the Court of Session. The qualifications for advocates are prescribed by the Faculty of Advocates, an ancient society election to which is the only method of becoming an advocate. Candidates are required to pay a large fee and must undergo an examination conducted by a committee of the Faculty. A strict supervision is exercised over its members by the Faculty, which has the power to disbar for improper conduct. An advocate is not permitted to act directly for clients, but must be instructed by a law agent.

Law agents constitute the "client caretaking" branch of the profession. They are also entitled to plead in any of the courts except the Supreme Courts. The qualifications for law agents are fixed by acts of Parliament and various Acts of Sederunt, passed by the Court of Session; and admission as a law agent is granted only by the Court of Session upon the petition of the applicant. The court may strike a law agent from the rolls for misconduct.

There are two important societies of law agents, the Writers to the King's Signet and the Society of Solicitors in the Supreme Courts. Special qualifications and additional fees are required for membership to these societies, and the members enjoy certain privileges.

Consultations between advocates and law agents take place in the great hall of the Parliament House. Here the young barrister waits for his first brief, and here the King's Counsel is consulted by the Writer to the Signet. Robert Louis Stevenson in his "Picturesque Notes of Edinburgh," describes this hall where he for a time walked briefless. "A pair of swing doors gives admittance to a hall. * * * This is the 'Salle des Pas-Perdus' of the Scottish Bar. Here by a ferocious custom, idle youths must promenade from ten till two. From end to end, singly or in pairs, the gowns and wigs go back and forward. Through a hum of talk and footfalls, the piping tones of a Macer announce a fresh cause, and call upon the names of those concerned. Intelligent men have been

walking here daily for ten or twenty years without a rag of business or a shilling of reward. In process of time they may, perhaps, be made the Sheriff-Substitute and Fountain of Justice at Lerwick or Tobermory."

In a long corridor adjoining the hall are great rows of wooden boxes each with a metal name plate. In these boxes the advocates keep the papers of the cases they are conducting.

LEGAL AID FOR POOR PRISONERS.

For many centuries in Scotland a person accused of crime has been entitled to the benefit of legal advice in all cases, and if unable to procure such advice, it is furnished him. Even in civil cases counsel have been provided for poor persons. A statute during the reign of James I. in 1424 provided:

"And gif there bee onie pure creature, for faulte of cunning or dispenses, that cannot or may not follow his cause, the King for the love of GOD, sall ordaine the judge, before quhom the cause suld be determined, to pur-wey and get a teill and a wise Advocate, to follow sik pure creatures causes."

Legal advice is furnished indigent prisoners not only at the trial but throughout the entire proceedings. This results in considerable advantage to the prisoner and in great saving of time to the courts. In cases where resistance is hopeless, or is likely to make the accused's case worse than appears in the indictment, he is advised to plead guilty. In cases of doubt the defense is carefully prepared and presented in proper manner.

The persons who represent poor prisoners are not left to haphazard choice but are regularly chosen and appointed. Each year six members of the Faculty of Advocates are appointed to be advocates for the poor. The Writers to the Signet and the Solicitors of the Supreme Court each appoint four poors' agents. Within each sheriffdom the sheriff annually orders that the law agents shall select agents for the poor. On circuit advocates of less than three years' standing are given cases by the local poors' agent. In Edinburgh and Dundee the town councils provide public defenders to represent poor persons in the police courts.

When a poor prisoner has been advised by the poors' agent to plead not guilty, the agent prepares the defense and secures the precognitions. If the trial is in the sheriff court the agent represents the accused there. In the High Court one of the advocates for the poor conducts the defense. If the charge is a serious one the Dean of the Faculty of Advocates, on application of the advocate for the poor, will assign a senior advocate, who must serve. The extent to which the poor prisoner's rights are protected may be shown by a case on circuit where there happened

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to be no counsel in attendance. The judge ordered the local sheriff to represent the prisoner, who was charged with theft.^{28a}

METHODS OF PROSECUTIONS AND PROSECUTORS.

PRIVATE PROSECUTION.

In Scotland, as in England, the earliest form of prosecution was at the instance of the party injured. This remained the only method till the sixteenth century. In 1587 the King's Advocate was authorized by act of Parliament²⁹ to prosecute in cases where the injured party failed to act.

The first formal step in a private prosecution was the filing, with the clerk of the Justiciary Court, a bill, praying the Court to grant criminal letters, these being both the summons to the accused to appear, and the formal charge against him. After the power of the Lord Advocate increased it was necessary for the private prosecutor to seek his concurrence to the bill, which could be refused only for proper cause. If the Court was of the opinion that the bill stated a criminal offense against the accused, the criminal letters were granted. These became the basis of the prosecution, which was conducted throughout by private counsel, instructed by the private prosecutor's law agent.

From the time that the Lord Advocate became active in prosecuting the number of private prosecutions fast diminished and soon the practice fell into almost complete disuse, the theory of public prosecution becoming accepted as a fundamental principle of criminal jurisprudence. A leading writer says in 1894: "Private prosecution, except in summary cases, is now unknown in practice."³⁰ A similar statement is made in a book on criminal law published in 1904.³¹ Notwithstanding this accepted practice, a private prosecution was instituted and successfully carried through in 1908 in the much discussed case of *Coates v. Brown*. In this case the Lord Advocate refused to prosecute and refused his concurrence to the bill for criminal letters.³² The Court granted criminal let-

^{28a} Hannah, 1836, 1. Swin. 289.

²⁹ Statute of James VI in 1587, c. 65, provided "That the thesaurer and advocate persew slaughters and utheris crimes, althoutht the parties be silent, or wold utherwayes privily agree." Hume is of the opinion that the King's Advocate prosecuted in trials for such crimes as treason and sedition before the above statute was passed. Hume, Vol. II, p. 130.

³⁰ Macdonald on the Criminal Law (3rd ed.), 281.

³¹ Anderson, Criminal Law of Scotland (2nd ed.), 249.

³² "My Lord Justice-General, Lord Justice-Clerk and Lords Commissioners of Justiciary, unto your Lordships Mean and Complain—J. & P. Coats, Limited, etc., upon David Brown, coal exporter, Glasgow, etc. *That Albeit* by the laws of this and of every other well-governed realm, *Falsehood, Fraud and Wil-*

ters and the private prosecutor was allowed to proceed independently of the Lord Advocate. The revival of private prosecution caused certain criticism, but it is believed by some that it was done to meet any exigencies that may arise in the administration of justice due to increased commercial trickery and labor agitation.

There has not been a private prosecution since the case of *Coates v. Brown*. In the early part of 1912 a prominent manufacturer of ships' compasses claimed that one of his employes had made copies of certain patterns and models for the purpose of using these in manufacturing compasses in competition with his employer. The Lord Advocate was asked to prosecute and on his refusal, a private prosecution was threatened. This was blocked, however, for the time being at least, by an action of slander instituted against the manufacturer by the accused employe.

PUBLIC PROSECUTION.

The Lord Advocate and His Assistants.

The almost universal form of prosecution in the High Court and the sheriff court with jury, is by indictment at the instance of the Lord Advocate. There is no grand jury in Scotland, the indictment being found by the Lord Advocate, who may prosecute or not entirely at his discretion. The Lord Advocate, who is one of the most important officials connected with the administration of justice, is appointed by the Crown from the Faculty of Advocates. He has a seat in Parliament, and is a member of the ministry of the day, going out with his party. In addition to his duties as public prosecutor, he performs many functions of a legislative and administrative character. He initiates and introduces in Parliament the legislation relative to criminal matters in Scotland and he appoints and controls the lesser officials of prosecution. He does not personally attend in court except in cases of very grave importance. Prosecutions in the High Court are conducted by the solicitor-general for Scotland, who in criminal matters acts as depute of the Lord Advocate, and by certain assistants called advocates-depute. These are members of the Faculty of Advocates and received their appointments from

*ful Imposition is a crime of a heinous nature and severely punishable: Yet True It Is And Of Verity that the said David Brown is guilty of the said crime actor or art and part: In So Far As*****". It was then charged that David Brown had contracted to deliver coal of a certain quality to the petitioners, that he procured from the colliery company a certificate of the shipment of such coal which he knew to be false, and obtained money on the faith of this certificate. The Lord Advocate refused to prosecute or to grant his concurrence on the ground, not that the charge was irrelevant, but because the facts were such, that conviction was improbable.*

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the Lord Advocate. They are not debarred from private practice consistent with their official duties. There are four regular and two special advocates-depute. One of the four prosecutes in Edinburgh and the other three in the different circuits. An extra depute is appointed to prosecute on the western circuit at Glasgow, where it is customary for two judges of the High Court to sit. The other special depute takes charge of certain important jury cases in the sheriff courts, the ordinary prosecutions there being conducted by the procurate-fiscal. The Lord Advocate and solicitor-general, when prosecuting in person, have the privilege of pleading inside the bar. The Lord Advocate receives a salary of 5,000 pounds a year and the solicitor-general receives 2,000 pounds. The salary of each of the regular advocates-depute is 700 pounds a year.

When the position of Lord Advocate becomes vacant, the solicitor-general, if he happens to be a member of Parliament, is usually appointed Lord Advocate. The advocates-depute have the chance of steady preferment so long as the Lord Advocate's party continues in power.

It was urged in a recent editorial in one of the Scottish legal periodicals that hereafter the appointment of the advocates-depute should not depend upon party affiliation.

The solicitor of the Lord Advocate's department is the Crown agent. He is the head of the Crown office at Edinburgh, and has charge of the records of criminal prosecutions. He is appointed by the Lord Advocate and goes out of office with him. The permanency of the Crown office is preserved by several clerks who continue office through the different governments. The highest permanent official connected with the Lord Advocate's department is the chief clerk in the Crown office.

Reports and precognitions from the procurators-fiscal are sent to the Crown office and are then submitted to Crown counsel, who decide what proceedings shall be taken. In practice Crown counsel generally consults with the Crown agent's chief clerk, who from long experience is familiar with all the points of procedure.

The Crown agent or his chief clerk acts as law agent at the trial of all criminal cases before the High Court of Justiciary at Edinburgh.

The Procurator Fiscal.

In each sheriffdom there is a prosecuting official called the procurator-fiscal. The early sheriffs established the office for the collection of the fines and forfeitures to which they were entitled. At a later period the duty of prosecuting in the sheriff court under the direction of the sheriff was delegated to the procurator-fiscal. As the power of the Lord Advocate increased the procurator-fiscal was brought under his control

and direction, and by the act of 1907³³ the power of appointing the procurator-fiscal, who is generally a law agent, was transferred from the sheriff to the Lord Advocate, whose depute he now is. A procurator-fiscal can be removed from office only by the Secretary for Scotland for inability or misbehavior, upon a report by the Lord President of the Court of Session and the Lord Justice-Clerk for the time being.³⁴ This means practically a life appointment. The procurators-fiscals at Edinburgh and Glasgow have had long and distinguished terms of service. The former, jointly with the procurator-fiscal of Fifeshire, is the author of one of the leading books on criminal procedure. A judge of the Justiciary Court, speaking of the procurator-fiscal of Glasgow, said that several of the judges of that court, when advocates-depute, were indebted to the procurator fiscal for much information and advice.

The procurator-fiscal prosecutes before the sheriff, sitting either with or without jury. Where a crime has been committed in the sheriffdom, it is the duty of the procurator-fiscal to conduct an investigation. He has the power of compelling the attendance of witnesses whom he examines privately, in an *ex parte* proceeding. His position in this respect is similar to that of the *juge d'instruction* of France. The statements of the witnesses to the procurator-fiscal are reduced to writing and are known as the precognitions. These are referred to Crown counsel, who decide whether an indictment shall be brought, and if so in what court it shall be tried. If the indictment is set for trial in the sheriff court, the procurator-fiscal prosecutes, except in rare cases of importance, where an advocate-depute takes charge of the case. When an advocate-depute prosecutes either in the High Court at Edinburgh or on circuit, or in the sheriff court the procurator-fiscal who conducted the investigation acts as law agent. The procurator-fiscal collects the fines and forfeitures in the sheriff court. It is also his duty to investigate all deaths of a sudden, accidental or suspicious character.

Prosecutions before justices of the peace are conducted by the procurator-fiscal of the justice of the peace court. They are appointed by the justices at quarter sessions.

The Burgh Prosecutor.

Prosecutions in the burgh and police courts are conducted by a burgh prosecutor. He is appointed by the Commissioners of Police,³⁵

³³Sheriff Court (Scotland) Act, 1907 (7 Edw. VII. c. 51), s. 22.

³⁴Sheriff Court (Scotland) Act, 1907 (7 Edw. VII. c. 51), s. 23.

³⁵Burgh Police (Scotland) Act, 1892 (55 and 56 Vict. c. 55), s. 461.

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who are really the Town Council.³⁶ He is generally a law agent; in Edinburgh he is an advocate. The prosecutor is not permitted to engage in any other business. The salary varies in the different cities; the prosecutor in Glasgow receiving about \$3,500.

It lies in the power of the burgh prosecutor to decide whether he will prosecute or not, and all complaints are in his name. Unlike the procurators-fiscal in the county he is not subject to the control or direction of the Lord Advocate. In Glasgow, where there are nine police courts, the lieutenants of police act as assistants to the burgh prosecutor.

SOLEMN PROCEDURE.

Procedure on indictment is in part regulated by the Criminal Procedure Act of 1887,³⁷ of which the present Lord Justice-Clerk, when Lord Advocate, was the author, and by certain sections of the Summary Jurisdiction Act of 1908.³⁸

PROCEEDINGS PRIOR TO TRIAL.

Apprehension and Commitment.

Arrest for examination may be either with or without warrant. A warrant for arrest is issued by a magistrate upon petition, which is generally in writing but need not be under oath, unless the magistrate so requires. The petition contains a statement of the charge. Arrest does not always follow the issuing of a warrant, as it is permissible to deliver a copy of the petition and warrant to the accused and inform him of the time and place of the examination warning him that if he does not appear he will be apprehended. Certain special acts provide for citation of the accused, viz., summoning him to appear for examination.

After making an arrest the officer should warn the prisoner that anything he says regarding the charge may be used in evidence against him. Voluntary statements made by the prisoner after being thus warned are admissible in evidence. Interrogations of arrested persons by the police are forbidden and confessions and admissions obtained in this way are inadmissible in evidence. A leading author on evidence says, "Nor will it render such examinations admissible that the prisoner was told he was at liberty to decline answering, for the police authorities are not permitted to examine him without the protection of a magistrate."³⁹ In

³⁶Testimony of Lord Advocate Shaw before the Royal Police Commission, 1907, p. 1214.

³⁷50 and 51 Vict. c. 35.

³⁸8 Edw. VII. c. 65.

³⁹Dickson on Evidence, s. 347.

this way "third degree" examinations by the police are prevented. Evidently the rule was not so strict a century ago, for in a case in 1858 the Lord Justice-Clerk (Inglis) said: "I was the first who many years ago pressed on the Court the necessity of putting a stop to what had been allowed to go too far, viz., the system adopted by police-officers of questioning prisoners after apprehension."⁴⁰

After arrest the accused is taken without delay before a magistrate—in practice the sheriff-substitute—for examination. This examination is private and until 1887 the accused was not allowed to have legal advice. The accused after being informed of the charge and being warned that anything he says may be used against him and that he may decline to answer is questioned by the magistrate or by the procurator-fiscal in the magistrate's presence. His answers and any further statements made by him are written down by the clerk and are signed by the accused and the magistrate, and attested by witnesses. The statements of the accused, known as his *declaration*, were according to Alison for the "double purpose of giving him an opportunity of clearing himself in so far as he can by his own allegations, and explaining any circumstances which may appear suspicious in his conduct, and of affording evidence on which the magistrate can with safety proceed in making up his mind whether or not to commit for trial."⁴¹ At the trial the declaration is generally read to the jury by the clerk of court at the close of evidence for the prosecution.

According to the act of 1887 a person immediately after arrest is entitled to secure the services of a law agent, and to have a private interview with him before examination on declaration, at which the agent may be present.⁴² When a serious offense is charged the examining magistrate should inform the accused of his right to consult a law agent. Following are the declarations in the Monson case (1893) and the Slater case (1909):

"Judicial declaration, dated 31st August, 1893. At Inveraray, the 31st day of August, 1893. In presence of John Campbell Shairp, Esquire, advocate. Sheriff-Substitute of Argyllshire:

"Compeared a prisoner, and the charge against him having been read over and explained to him, and he having been judicially admonished, Mr. Dugald M'Lachlan, writer, Lochgilphead, and Mr. Thomas Lindsay Clark, law agent, Edinburgh, agents for the prisoner, being present, and being thereafter examined thereanent—*declares*: My name is Alfred John Monson. I am thirty-three years of age, and I am married. I have no profession, and at present reside at

⁴⁰*Lewis v. Blair*, 1858, 3 Irv. 16, 21.

⁴¹Allison's Practice, p. 131.

⁴²Sec. 17.

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Ardlamont House, Argyllshire. I have to say that I am not guilty of the charge made against me, nor was I with Mr. Hambrough, nor within sight of him, when the accident happened. Therefore I cannot explain how it happened. Under the advice of my law agent, I decline to make any further declaration at present. All which I declare to be truth."

(Signed) Alfred John Monson.
(") J. C. Shairp.

J. C. MacIullich,
Thos. M'Naughton,
John Campbell,
David Stewart, } Witnesses.

"My name is Oscar Slater. I am a native of Germany, married, thirty-eight years of age, a dentist, and have no residence at present.

"I know nothing about the charge of having assaulted Marion Gilchrist and murdering her. I am innocent. All of which I declare to be truth."⁴³

The accused may refuse, if he wishes, to make a declaration, in which case he is at once committed for further examination. In practice an accused is not likely to be advised by his agent to make a declaration unless he has something to state which will tend to clear him at once of the charge.

Where the prisoner has made a declaration and the magistrate does not consider this sufficient cause for ordering the prisoner's immediate release, he examines available witnesses. This examination is private. If the magistrate is then in doubt whether there is sufficient ground for committing the accused for trial he may commit him for further examination, so as to allow a more extensive inquiry to be made. In practice never more than eight days elapse between commitment for further examination and commitment for trial. During this period the procurator-fiscal makes a complete investigation of the charge. He secures the precognitions of the witnesses and collects all articles and documents that may be used in evidence. When the accused is again brought before the magistrate, the latter considers the precognitions and if in his opinion these make out a *prima facie* case against the prisoner, he commits him for trial.

Bail.

The subject of bail is regulated entirely by statute. All crimes except murder and treason are bailable by a magistrate, and in these exceptional cases bail may be allowed by the High Court of Justiciary or the Lord Advocate. After the accused is brought before a magistrate for examination on declaration he may apply for bail, which the magistrate in

⁴³The caption and signatures are omitted.

his discretion may grant, or may refuse till the accused is committed for trial.⁴⁴ Bail is sometimes refused for the period between examination on declaration and commitment for trial for the purpose of preventing the accused from destroying incriminating evidence. During this period the procurator-fiscal is conducting his investigation into the circumstances of the crime. After the accused has been committed for trial and the opportunity has been given the public prosecutor to be heard, the magistrate may grant or refuse bail.⁴⁵ Where the magistrate refuses bail or where the applicant is dissatisfied with the amount, he may appeal to the High Court of Justiciary. The prosecutor may also appeal if dissatisfied with the granting of bail or the amount thereof.⁴⁶ According to an early statute bail was granted as matter of right in all non-capital cases, and the amount of bail was prescribed.

Prevention of Undue Delay in Prosecutions.

The Scottish law provides for no writ of habeas corpus. In lieu of this it is provided by statute⁴⁷ that where a prisoner has remained in prison for sixty days on a commitment for trial and no indictment has been served upon him, he may by notice to the Lord Advocate compel that official either to serve him with an indictment within fourteen days or to show cause before the High Court of Justiciary why the indictment was not served. If sufficient cause is not shown, the prisoner is released, but the Lord Advocate may subsequently raise an indictment against him and cause him to be arrested and recommitted. Where a prisoner on whom an indictment has been served is detained in custody for more than 80 days, then unless his trial is finally concluded within 110 days from the date of his commitment for trial, or unless such delay was due to some sufficient cause for which the prosecutor was not responsible, the prisoner is set at liberty and declared free of the charge.

Bringing of Indictment.

After the procurator-fiscal has obtained the precognitions of the witnesses, he reports these with his opinion of the case to the Crown agent, who submits them along with a record of the previous convictions of the accused to Crown counsel—in ordinary cases to an advocate depute, in serious cases to the solicitor-general or the Lord Advocate. Crown counsel, who often consults with the officials of the Crown office,

⁴⁴Crim. Proc. (Scotland) Act, 1887 (50 and 51 Vict. c. 35), s. 18.

⁴⁵Bail (Scotland) Act, 1888 (51 and 52 Vict. c. 36), s. 2.

⁴⁶Bail (Scotland) Act, 1888 (51 and 52 Vict. c. 36), s. 5.

⁴⁷Crim. Proc. (Scotland) Act, 1887 (50 and 51 Vict. c. 35), s. 43.

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decides whether an indictment shall be brought, and if so, in what court the accused shall be tried. The latter decision depends upon the seriousness of the offense, and the number and character of the previous convictions. If the punishment that may be imposed is greater than two years' imprisonment the trial must be before the High Court. In such a case Crown counsel drafts the indictment and prosecutes when it comes to trial. If Crown counsel directs that the trial shall be before the sheriff court the indictment is drafted by the procurator-fiscal who prosecutes.

Comments on Preliminary Investigation.

The proceedings up to this point present two of the most characteristic features of the Scottish procedure, viz., (1) the private character of the preliminary investigation and (2) the bringing of the indictment by the Lord Advocate at his discretion. The success of both of these depends upon the ability and integrity of the prosecuting officials. Where there is the tradition of honest administration, where the officials are paid adequate salaries, where the term of service is long, and the chances of promotion good, and particularly where there is a responsible head, the results are likely to be satisfactory, and such seems to be the case in Scotland. In discussing the Criminal Procedure Bill of 1887 Lord Advocate Macdonald said in the House of Commons:

"In carrying out any procedure whatever you cannot avoid the necessity of depending to a certain extent upon the discretion of your officials, and all you can do in cases where the discretion is abused and mistakes of a serious kind are made, is to bring public opinion and the opinion of this house to bear upon them."⁴⁸

All the prosecutors in the High Court and the sheriff court are appointed by the Lord Advocate, and are under his control. He is responsible for their official acts and may be called to account for them at any time on the floor of the House of Commons.

One of the purposes of the private examination is to prevent the facts and circumstances of the charge from becoming publicly known before the trial, so that the persons selected as jurors may be free from preconceived opinions and bias. To a great extent this result is secured. The officials, of course, do not disclose the evidence, and in comparison with the practice in this country, little newspaper investigation and discussion of the case prior to the trial. The Scottish newspapers have not, however, an absolutely clean record.^{49 1/2}

⁴⁸316 Hansard 1377.

^{49 1/2}In the famous Monson case in 1893, Mr. Comrie Thompson for the defense warned the jury not to be prejudiced by the statements of the newspapers prior to the trial. He said:

Indictment.

All prosecutions before the High Court and the sheriff court are by indictment in the name of the Lord Advocate. One of the most important improvements brought about by the Act of 1887 is the simplification of indictments. Before that act the indictment was a most complex and technical document. The charging part was in syllogistic form with a major proposition, that by law a certain act was punishable as a crime, and a minor proposition, that the accused committed that act, whereby he was guilty of such crime. The circumstances of the offense had to be stated with great precision. The indictment in a notorious case in 1878 was as follows:

"EUGENE MARIE CHANTRELLE, now or lately prisoner in the prison of Edinburgh, you are indicted and accused at the instance of the Right Honourable William Watson, Her Majesty's Advocate for Her Majesty's interest: That albeit, by the laws of this and every well-governed realm, murder is a crime of an heinous nature, and severely punishable; yet true it is and of verity that you, the said Eugene Marie Chantrelle, are guilty of the said crime, actor, or art and part: In so far, as on the 1st or 2nd day of January, 1878, or on one or other of the days of December immediately preceding, within the dwelling-house in or near George street, Edinburgh, then occupied by you, the said Eugene Marie Chantrelle, you did wickedly and feloniously administer to, or cause to be taken by, Elizabeth Cullen Dyer or Chantrelle, your wife, now deceased, then residing with you, in an orange, or part or parts thereof, and in lemonade, or in one or other of these articles, or in some other article of food or drink to the prosecutor unknown, or in some other manner to the prosecutor unknown, a quantity or quantities of opium or other poison to the prosecutor unknown; and the said Elizabeth Cullen Dyer or Chantrelle, having taken the said opium or other poison by you administered or caused to be taken afresaid, did, in consequence

"But all these elements of anxiety are as nothing compared with that which I now mention to you, namely, the fact that I see the greatest difficulty, acting as conscientiously as you may, in your disabusing your minds of the prejudice which has been excited against this man at the bar during the last three or four months. I impute no motives to the newspapers. I am sure they were not actuated by any base feeling of animosity, but I cannot help saying that they have, in many instances and with great persistency, attempted to gratify the curiosity of the public at the expense of the man who was suspected of the crime. No one in this country has been able, during the period I have mentioned, to lift a newspaper in which he did not find himself face to face with paragraphs headed *The Ardlamont Mystery* or *The Monson Case*; and in every instance the statements contained in these paragraphs were highly prejudicial to the prisoner."

In July, 1912, a murder was committed in a park near Dunfermline and a young man named Anderson was charged with the offense. The witnesses to the tragedy were interviewed by newspaper reporters and their statements published. An Edinburgh paper in reporting the case started two paragraphs with the following: "Anderson's landlady, in a conversation with a *Dundee Advertiser* reporter, said....."

"John Anderson, one of the park staff, gave a graphic account of the movements of Anderson to a *Dundee Courier* reporter."

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thereof, die on the said 2nd day of January, 1878, and was thus murdered by you, the said Eugene Marie Chantrelle." * * * "All which, or part thereof, being found proven by the verdict of an assize, or admitted by the judicial confession of you the said Eugene Marie Chantrelle, before the Lord Justice-General, Lord Justice-Clerk, and Lords Commissioners of Justiciary, you the said Eugene Marie Chantrelle ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

(Signed) JAS. MUIRHEAD, A. D."

In contrast with this are the indictments in two recent murder cases;

"James Henry Hollingsworth, prisoner in the prison of Greenock, you are Indicted at the instance of the Right Honourable ALEXANDER URE, His Majesty's Advocate, and the charge against you is that, on 8th March, 1912, within the dwelling-house at 4 Watt street, Greenock, then occupied by Jamesina Hollingsworth, your wife, you did assault Malcolm Hollingsworth, your son, then residing at 4 Watt street aforesaid, and now deceased, cut his throat with a razor; and did murder him."

DAVID ANDERSON, A. D.

"Peter Donald, at present an inmate of the Royal Asylum, Aberdeen, you are Indicted at the instance of the Right Honourable ALEXANDER URE, His Majesty's Advocate, and the charge against you is that on 30th April, 1912, in the bathroom of your house, No. 65 Duthie Terrace, Aberdeen, you did drown Phyllis Donald, aged 13 months, your infant daughter, by placing her in water in the bath of said bathroom, and did murder her."

DAVID ANDERSON, A. D.

In a schedule attached to the Act of 1887 examples of indictments are given. They are all notable for their simplicity and conciseness. Following are several examples:

"You did break into the house occupied by Andrew Howe, banker's clerk, and did there steal twelve spoons, a ladle, and a candlestick."

"You did place your hand in one of the pockets of Thomas Kerr, commercial traveller, 115 Main street, Perth, and did thus attempt to steal."

"You did, while in the employment of James Pentland, accountant, in Frederick street, Edinburgh, embezzle forty pounds fifteen shillings of money."

"You did pretend to Norah Omond, residing there, that you were a collector of subscriptions for a charitable society, and did thus induce her to deliver to you one pound one shilling of money as a subscription thereto, which you appropriated to your own use."

"You did administer poison to Vincent Wontner, your son, and did murder him."

"You did ravish Harriet Cowan, millworker, of 27 Tweed Row, Peebles."

It is permitted to charge in an indictment by way of aggravation the previous conviction or convictions, in any part of the United Kingdom, of a similar or cognate offense. Thus in charging a crime inferring dishonesty, there may be added a charge that the accused was previously

convicted of another form of dishonesty; and in charging a crime of violence any previous conviction of a violent crime may be charged.⁴⁹ For instance:

"Michael Monaghan, prisoner in the prison of Glasgow, you are Indicted at the instance of the Right Honourable ALEXANDER URE, His Majesty's Advocate, and the charge against you is that, on 26th May, 1912, in Charlotte Lane, Glasgow, you did assault John Fraser Forbes, residing at 16 Watson street, Glasgow; and did seize him by the throat, hold him against a wall, place your hand in one of his pockets, and did thus attempt to rob him; and you have been previously convicted of assault, of dishonest appropriation of property, and of attempt to appropriate property dishonestly.

GEO. MORTON, A. D."

Notwithstanding the simplicity of the indictment liberal power of amendment is given to the trial judge. A section of the act of 1908 provides that:

"It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the complaint or indictment by deletion, alteration, or addition, so as to cure any error or defect therein, or to meet any objections thereto, or to cure any discrepancy or variance between the complaint or indictment and the evidence. Provided that such amendment shall not change the character of the offense charged, and provided further that, if the court shall be of opinion that the accused may by such amendment be in any way prejudiced in his defense on the merits of the case, the court shall grant such remedy to the accused by adjournment or otherwise as to the court may seem just."⁵⁰

Thus the ends of justice cannot be defeated by a defect in the indictment, or a variance between the indictment and proof, and at the same time the accused is protected from surprise or prejudice.

Service of the Indictment.

For many years it has been required that a copy of the indictment with a complete list of the witnesses and the productions be served on the accused. This is greatly to his advantage, as it enables him to prepare an intelligent defense, and to investigate the character of the witnesses against him. The prosecutor at the trial is not permitted to call any witnesses against the accused of whom he has not received notice. Until recently the accused was also served with a copy of the jury list. This practice was abolished by the Act of 1887, which, however, provides that a copy shall be furnished the accused on application.⁵¹

⁴⁹Crim. Proc. (Scotland) Act, 1887 (50 and 51 Vict. c. 35), secs. 63 and 64.

⁵⁰Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. VII. c. 65), s. 30.

⁵¹Crim. Proc. (Scotland) Act, 1887 (50 and 51 Vict. c. 35), s. 38.

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Pleading to Indictment.

When an accused person is served with an indictment he is also notified to make two appearances, the first for the purpose of pleading to the indictment and the second for trial. These appearances are called "diets." The first diet is always before a sheriff—the nearest sheriff to the prison, if the accused is confined; the sheriff of his domicile, if the accused has been liberated on bail. The second diet is before the court which has jurisdiction to try the offense—either the High Court or the sheriff court, as determined by Crown counsel. The first diet must be not less than six days after the service of the indictment and the second not less than nine days after the first diet. Following is the form used when the first diet is in the sheriff court, and the second diet in the High Court:

A. B., take notice that you will have to compare before the sheriff of within the Sheriff Court House at upon the day of 188.. at o'clock for the first diet, and also before the High Court of Justiciary within the Court House at on the day of 188.. at o'clock for the second diet, to answer to the indictment against you to which this notice is attached.

Served on the day of 188.. by me.

JAMES BAIRD,

Chief Warden of the Prison of Edinburgh.

JAMES HALDANE, witness.

Preliminary objections by way of abatement, for instance, that the court has not jurisdiction, that there was a defect in the service, or that the indictment is defective, must be presented at the first diet.

The last of these objections was formerly very frequent, but since the act of 1887, which simplified indictments, such objection is seldom made, except when it is claimed that the indictment fails to state a criminal charge. In case the indictment is shown to be defective the sheriff has extensive power to amend the indictment, provided that this will cure the defect. If not, the diet is adjourned, and a new indictment is served. All pleas in bar of trial, such as that the accused has already "tholed an assize" (double jeopardy) or is insane at the time, must be presented at the first diet. Special defenses such as alibi, insanity and self-defense, must be pleaded at the first diet, unless cause can be shown to the satisfaction of the trial court for the defense not having been lodged till a later date, which must in any case not be less than two clear days before the second diet.⁵² The procedure at the first diet is practically the same, whether the second diet is to be before the sheriff

⁵²Crim. Proced. (Scotland) Act, 1887 (50 and 51 Vict. c. 35), s. 36.

court or the High Court. In the latter case the proceedings at the first diet may be reviewed by the High Court at the second diet. The sheriff may also reserve objections for the consideration of the High Court. If the accused pleads guilty to the charge where the second diet is set for the sheriff court, the sheriff sitting at the first diet may at once sentence. If the second diet was set for the High Court, the accused who has pleaded guilty is remitted to that court for sentence.

It is possible for a person who has been committed for trial to hasten the procedure if he intends to plead guilty to the charge. He may give through his law agent written notice of his intention to the Crown agent, in which event an indictment will be served at once, citing the accused to appear at a diet not less than four days after the date of service.⁵³ If the plea is accepted by the procurator-fiscal, the sheriff will either impose sentence, or remit the accused to the High Court for sentence, according to the degree of punishment that may be imposed.

The system of two diets results in a great saving of time at the trial. Of course, if the accused pleads guilty at the first diet, there is no trial. If he pleads not guilty, all questions preliminary to the trial of the facts have been settled, and the issues are determined. As a result the jurors need be in attendance for a much shorter time than is necessary when all questions relative to service, jurisdiction and the sufficiency of the indictment must be determined at the trial.

The accused is required to provide the prosecutor with a list of his witnesses and productions at least three days before his trial, and he is not allowed to examine any witnesses nor put in evidence any productions not contained in this list. If he can show before the jury is sworn that he was unable to give the full notice of three days, the court will adjourn or postpone the trial. The chief reason for requiring the accused to plead his special defenses at the first diet, and to give notice of his witnesses is the fact, that the prosecution's case must be completed before the defense calls any witnesses. It is thus necessary for the prosecution to anticipate its rebuttal.

Qualifications of Jurors.

In criminal trials the jury is composed of five special jurors and ten common jurors. The difference between the two classes of jurors is based upon the amount of property owned. The qualifications for each class are prescribed by statute. Every man, except those expressly exempted, between the ages of twenty-one and sixty years, is eligible to

⁵³Crim. Proc. (Scotland) Act, 1887 (50 and 51 Vict. c. 35), s. 31.

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serve as a common juror who is seised in his own right or in the right of his wife of an inheritable estate within the county or town from which the jury is to come, of the yearly value of \$25 at least, or is worth in personal property the sum of \$1000 at least.⁵⁴ A special juror must either pay a land-tax in the county or town from which the jury is to be taken upon \$500 of valued rent or pay assessed taxes to the Crown on a house of the yearly rent of \$150, or own lands in Scotland of 100 pounds rent per annum, or possess personal property to the amount of 1,000 pounds.⁵⁵ A list of the persons qualified to serve as jurors is kept by the Sheriff-Clerk of the county. No exact number of jurors need be summoned for a particular sitting of a court. It is sufficient to summon "such jurors only commencing from the top of the lists of special and common jurors respectively, as may be necessary to ensure a sufficient number" for the trial. Jurors in criminal cases are not paid for their services or reimbursed for their expenses. This works considerable hardship in some cases, particularly if the jurors must come from any of the outlying islands such as the Orkneys or the Shetlands. One of the judges of the High Court was asked why the jurors are not paid, at least an amount equal to their necessary expenses. He replied that jury service is regarded as a high civic duty which payment would tend to lessen. After very long and difficult cases the jurors are generally excused, by the judge, from jury service for a term of years.

⁵⁴Jurors (Scotland) Act, 1825 (6 Geo. IV. c. 22), s. 1.

⁵⁵Jury Trials (Scotland) Act, 1815 (55 Geo. III. c. 42), s. 24.

[To be concluded in the March number.]

THE PREVALENCE OF CRIME IN THE UNITED STATES AND
ITS EXTENT COMPARED WITH THAT IN THE
LEADING EUROPEAN STATES.^{1a}

JULIUS GOEBEL, JR.,
University of Illinois.

It is a striking, though not a generally known fact, that the increase of crime in the United States has been greatly out of proportion to the growth of our population. This is a fact so important and alarming, that it demands the attention of every true patriot. The common saying that a "wave" of crime is now passing over the country which may subside in time, gives no explanation of the facts, and affords little consolation. Only by a careful study of the statistical evidence is it possible to ascertain the true situation in the United States. A comparison of crime conditions in this country as we learn of them in our national and state records, with the conditions in the leading European countries may help us to understand the situation in the United States and may suggest some possible means of remedy. This is the purpose of the present paper.

In order to understand the true value of criminal statistics in the United States, we should consider first, the character of our national and state statistics. Criminal statistics may be divided in three classes: first, judicial statistics, which are a record of the number of convictions, and the applications of penalties; secondly, prison statistics, which deal with the number of prisoners, their offences, the penalties, etc.; finally, the actual criminal statistics, which give the data concerning the convict's appearance and criminal record. All of these statistics become of value only when compared with the statistics of the population and the social status of non-criminals. Of the various classes of statistics mentioned, we possess for the whole United States only a report of prisoners. To be sure the report attempts to include data that come under the remaining classes, but these attempts, considered from the scientific point of view, are of little value and the latest United States report of 1904 is no exception.

The census report of 1904 being, as I have said, the latest, must necessarily form the basis of our study of the crime of the nation as a whole. It is styled a report on "Prisoners and Juvenile Delinquents in Institutions on June 30, 1904." It contains statistics of criminals and several studies in special phases of criminology. Most of these studies

^{1a}Extracted from the N. W. Harris Political Science Prize Essay, 1911.

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are irrelevant and of little value; e. g., the study of literacy of criminals. Unfortunately enough, the Census Bureau in collecting the statistics for 1904 deviated from the methods used in 1890, with the result, that it creates an entirely false impression of a great decrease in crime. But more of this later.

As the National Census Bureau makes a collection of criminal statistics but once every ten or fourteen years and then in a very defective manner, we are obliged to turn for recent information to the reports of the state prisons and state judiciaries. It must be confessed, however, that with few exceptions these reports are for the student of criminology of very little value.¹ This is due not only to the inefficiency of the officers in charge in collecting statistics, but also to the variety of purposes which their statistics have to serve.

Compare with these meager statistical accounts, which as we have seen, are either faulty or out of date, the altogether admirable statistics of European countries, such as exist in England, France and Germany. While the methods of collecting this information which are pursued in England and France are excellent, those used in Germany are perhaps the most efficient. A detailed biography and description of each criminal immediately after conviction is filed at the Imperial Statistical Bureau. On the basis of such records collected and assorted, at the end of each year, the annual criminal report is constructed.²

Keeping in mind these defects of our statistical reports as compared with those of other countries, we may proceed to consider what the United States "Report on Prisoners" tells us concerning the prevalence and increase of crime. Between the years 1860³ and 1890 we have the following:

Year.	Prison population.	Per million of population.
1860.....	19,086	607
1870.....	32,901	853
1880.....	58,609	1,169
1890.....	82,329	1,315

A glance at this table shows us, that the prison population multiplied itself four times from 1860 to 1890, although the general population only doubled.

As I said before, the method of collecting the 1904 statistics differed essentially from that of previous years, in that it excluded classes of prisoners which up to that time had been included.⁴ It does not record

¹On this subject see the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Vol. I, p. 45.

²*Handwörterbuch der Staatswissenschaften*, Vol. IV, p. 889.

³The report of 1850 was notoriously incomplete.

⁴United States Census Report "Prisoners and Juvenile Delinquents," 1904, p. 13.

prisoners serving out fines, prisoners awaiting trial, or insane prisoners. Taking no account of these the census of 1904 showed a total of 81,772 persons⁵ confined in civil prisons on June 30 of that year, making a ratio of 100.6 persons to every 100,000 of general population.⁶ If we deduct now, from the census of 1890, the classes which are omitted in the 1904 report, we get a result of 66,803 prisoners in civil prisons of that year, and a ratio, instead of 1,315 per million population, to 1,067, an apparent decrease of 61 per million of population. This denotes, however, a decrease not in the amount of crime, but only in the number of criminals sentenced.

These statistics are for the major and minor offenders. Inasmuch as there is naturally much fluctuation in the proportion of minor offenders we have here the greatest variety of increase and decrease in the various states. Major offenders, on the other hand, present a constant increase from year to year. We shall next take up the statistics of major offenders, which of course show the real state of criminality in the country.

In 1880 the state prisons contained a total of 30,659 prisoners. In 1890 the number increased about 47½ per cent, to 45,233, while the general population increased about 24 per cent. In 1904, the number of state prison inmates was 53,292⁷ and there were 7,261 prisoners in reformatories for adults all felons. The census of 1904 gives the number of major offenders as 59,306, an increase since 1890 of about 31 per cent, the population having increased in the same time a little less than 30 per cent.⁸ The increase of major offenders in the prison population from 1880 to 1904 was 95 per cent, while the increase of general population has been estimated to have been about 62 per cent. We have, therefore, clearly an appalling increase in prison population, in the space of twenty-four years, and yet the infrequency of the enumerations make it possible to determine the specific time when the increase took place.

Fortunately, indeed, the "National Prison Association" in 1895 took a special census of the state prisons. This showed that there were 54,244 commitments.⁹ If these statistics are to be credited, our prison population rose from 45,233 in 1890 to 54,244 in 1895, an approximate

⁵*Ibid*, p. 14.

⁶By general population is meant the inhabitants of the country exclusive of prisoners.

⁷United States Census Report, etc., pp. 68-87.

⁸In making comparison with the population, it must be remembered that we are compelled to use the enumeration of 1900. There was without doubt a large increase from 1900-1904. Our results are, therefore, simply approximate.

⁹JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Vol. I, p. 381.

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increase of 20 per cent in the same period. Our table now from 1880-1904 is as follows:

Year.	State prisoners.
1880.....	30,659
1890.....	45,233
1895.....	54,244
1904.....	59,306

This table shows that a slight decrease in prisoners in proportion to the general population, may have taken place between 1895 and 1904; but it must be remembered again, that the decrease may be simply apparent, for parole and probation laws, and the founding of reformatory institutions received a great impetus during these years.

Having ascertained that between 1895 and 1904, the prison population underwent at best but a slight decrease, we shall next inquire into the distribution of crime over the whole country, between 1890 and 1904:

Division. 10 11	June 30, 1904. Prisoners.		June 1, 1890. Prisoners.	
	Number.	Number per 100,000 of population.	Number.	Number per 100,000 of population.
Continental United States.....	81,772	100.6	82,329	131.5
North Atlantic.....	27,389	121.6	28,258	162.4
South Atlantic.....	11,150	100.5	11,409	128.8
North Central.....	21,000	75.2	19,854	88.8
South Central.....	14,614	95.7	16,084	146.6
Western.....	7,619	169.4	6,724	22.1

It will be seen from this table that the distribution of prisoners per 100,000 of population, is greatest in the western division (169.4), the North Atlantic states being second with the sum of 121.6 per 100,000 of population. The south Atlantic states rank third with 100.5.

An examination of the number of major¹² offenders serving sentences in these same years, present again an entirely different aspect of the situation, and here we have a much truer criterion of the criminality of the country.

Division.	State prison inmates June 1, 1890.	Major offenders June 30, 1904.
North Atlantic.....	14,447	15,052
South Atlantic.....	6,466	9,147
North Central.....	10,990	16,215
South Central.....	9,241	12,971
Western.....	4,059	5,921

Without doubt, the increase in major offenders was great between 1890 and 1904, but the increase was also extremely uneven. The North Atlantic states showed practically no increase in proportion to their

¹⁰I have explained the discrepancies of this record previously, but lack of space forbids an analysis of the mistakes for each division.

¹¹United States Census Report on Prisoners, etc., p. 14, 1904.

¹²I assume that inmates of state prisons are major offenders.

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population; the North Central states, an increase¹³ of some fifty per cent in prison population, while the general population of this section increased only 25 per cent; and the two southern divisions showed an increase from 25 per cent to 50 per cent.

We have conclusively established the fact that the number of serious offenders multiplied in this country from 1890 to 1904. We are, however, not justified in saying that the criminality of the country has likewise increased, for, in the first place, these statistics, being those of prisoners solely, prove nothing but an increase in commitments. Secondly, we find that with the development of the country, the number of statutory crimes has increased. The growth of corporations, of commerce, and of the urban population has necessitated an enormous number of new laws on our statute books, and consequently a multiplication of felonies and misdemeanors. But we must not forget that coincident with the increase in statutory crime, certain of the older sorts of crime such as hold-ups have decreased within the last ten years. In 1830 the horse thief was perhaps the most frequent offender,¹⁴ but today we rarely hear of him, unless it be in certain of the southwestern states. This question of increase in statutory crime, leads next to the consideration of the great divisions of crime.

In this respect, again, the classification of the 1904 report varies from that used in 1890. The offenses "against the government" have been included in the category of offenses "against public policy," as a sub-division of the general groups "against society." The division of offenses "on the high seas," has been omitted.¹⁵

The following table gives an insight into the distribution of the main divisions of offenses:

Class of Offences	PRISONERS ENUMERATED JUNE 30, 1904.											
	Continental United States		North Atlantic Division		South Atlantic Division		North Central Division		South Central Division		Western Division	
	Number	% Distribution	Number	% Distribution	Number	% Distribution	Number	% Distribution	Number	% Distribution	Number	% Distribution
Total of both sexes	81,772	100.0	27,389	100.0	11,150	100.0	21,000	100.0	14,614	100.0	7,619	100.0
Against Society	17,739	21.7	10,290	37.6	1,467	13.2	3,473	16.5	1,257	8.6	1,252	16.4
Against the Person...	26,017	31.8	5,645	20.6	4,724	42.4	6,357	30.3	6,711	45.9	2,580	33.9
Against Property....	37,166	45.5	11,272	41.2	4,692	42.1	10,951	52.1	6,587	45.1	3,664	48.1
Double Crimes.....	126	0.2	47	0.2	29	0.3	16	0.1	23	0.2	11	0.1
Unclassified	127	0.2	34	0.1	6	0.1	67	0.3	19	0.1	1	less than 0.1
Offence not stated..	597	0.7	101	0.4	232	2.1	136	0.6	17	0.1	111	1.5

¹³This increase has been attributed to the negro. This I very much doubt, as the census report for 1900 shows a percentage of 2.1 of negro population (p. 17, United States Census Report on Prisoners, etc., 1904).

¹⁴*Nordamerika's Sittliche Zustände* (1835), Vol. II. Appendix.

¹⁵United States Census Report on Prisoners, etc., 1904, p. 20.

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We see, then, that the largest class of offenses is that "against property," with a total of 45.5 per cent. The offenses "against the person" come second with 31.8 per cent, and those "against society" come third with 21.7 per cent. This is the condition for Continental United States. The percentages for the divisions vary somewhat. In the North Atlantic, the north central, and the western divisions convictions for crimes against property are more numerous than for those against the person. In the two southern sections, we find an exactly opposite state of affairs, although the difference is by only a fraction of one per cent in each case. Offenses against society form the smallest percentage in all parts of the United States, the north Atlantic states showing a percentage of 37.6 as contrasted with 16.5 per cent for the north central division. The two southern sections have the lowest ratios, 13.2 and 8.6 per cent for the south Atlantic and south central divisions, respectively.

The census report divides the last named group into two classes: offenses "against chastity" and those against "public policy."¹⁶ By far the greatest number of convictions fall within the group of the latter offenses. They present a total of 15,308 as contrasted with 2,431 convictions for offenses against chastity. The commitments for drunkenness¹⁷ in the former groups alone being 4,701, with those for vagrancy next with 4,287.

In the group of offenses against the person, homicide shows the largest percentage of 41.4,¹⁸ the next group being that of assault with 33.8 per cent. In many states, however, assault is simply punished by fine. The large percentage of prisoners convicted of homicide may be explained by the fact that most of them are incarcerated either for life or for very long terms; hence the large number of 10,774 prisoners for the whole United States.¹⁹

The total number of prisoners convicted for offenses against property was, as we have seen, 37,166. Of this number 49.8 per cent were

¹⁶Offenses against public policy are offenses of counterfeiting, drunkenness, disorderly conduct, vagrancy, violation of U. S.

¹⁷Nearly one-half of these prisoners in the North Atlantic group are accredited to Massachusetts (p. 21, Census Report on Prisoners, etc., 1904.)

¹⁸Homicide is by far the most rapidly growing and prevalent of serious crimes in the United States. Not only do our prison records show it, but also many cities complain of the tremendous growth. In 1910, according to the Chicago police report, there were 202 homicides in that city and only one man sentenced to be hanged. In New York since 1901 there have been 1161 trials for homicide and 382 convictions. The report does not say how many homicides were actually committed. In Louisville in 1910, 47 homicides and no executions. In Dallas (92,000 population) in 1910 there were 54 homicides, an average of 1 for each 1704 of the population. There were but 23 indictments and only one offender convicted.

¹⁹United States Census Report on Prisoners, etc., 1904, p. 22.

sentenced for larceny, and 37.8 per cent for burglary, the most common offense in cities. The various applications and distinction in the use of the term larceny substantially affect the records, in that some states consider a theft below \$50.00 petit larceny, while in others a theft of \$25.00 is grand larceny.

Before leaving the subject of the statistics of the 1904 census, a word with regard to juvenile delinquents may be in place. On June 1st, 1890, there were 14,846 of these in penal institutions,²⁰ while on June 30th, 1904, there were 23,034, an increase of some 55.2 per cent.²¹ In vain does the statistician attempt to explain the enormous increase in the number of juvenile delinquents by pointing out the great number of new reformatories, for, as we have already seen, the result of their foundation was not a decrease in population of the state prisons.

In the north Atlantic divisions, there was a steady increase in all of the states which had reformatories in 1890, with the exception of Connecticut, Rhode Island and New Jersey.²² In three south Atlantic states there were reformatories in 1890, and Maryland alone of these showed a smaller ratio in 1904 than in 1890.²³ Of the states in the north central division having institutions in 1890, Minnesota, Nebraska, Ohio and Wisconsin experienced a decrease; Kentucky and Louisiana, which alone among the south central states reformatories, showed a smaller ratio; and the two states in the Western section, California and Colorado, present a decided increase.

Such is the evidence which is furnished us by our national statistical bureau. It goes no further, as we have seen, than the year 1904. We turn, therefore, to the state judicial and prison reports. Unfortunately I have not been able to obtain more than four reports of the former, and but eighteen of the latter, which have been of any value. The majority of the reports do not give summarized totals and attempt only a very superficial tabulation. Nevertheless, it is worth while to inquire into the story they tell.

The report of the Attorney-General of California²⁴ does not contain any comparison in regard to crime for the past six years. The report is interesting simply as a means of comparing the number of convictions with the total of accusations made during the period of the two last years. From July 1, 1908, to June 30, 1910, there were 4,663

²⁰United States Census Report on Prisoners, etc., 1904, p. 227.

²¹There were 39 in 1904, some, as in Louisiana, being private concerns.

²²United States Census Report on Prisons, etc., 1904, p. 228.

²³Delaware and District of Columbia increased 24.5 and 54.5 per cent, respectively.

²⁴Biennial report of the Attorney-General of California, 1910, p. 44.

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accusations in the courts, and only 849 of these resulted in convictions; 329 were acquitted, 2,377 pleaded guilty, and the rest of the cases were "otherwise disposed of."

The Michigan report, like the California report, contains no tabulated summary of increase or decrease, but limits itself also to giving the number of prosecutions, etc. For the year ending June 30, 1910, there were 30,063 cases prosecuted in Michigan, and of this number there were 24,133 convicted, only 2,510 acquitted, and 1,266 cases were discharged on examination—evidence of the vigor of criminal prosecution in Michigan.²⁵

The report of the North Carolina Attorney-General is the most satisfactory of the four. It is the only state report which shows a substantial diminution in crime, 9,505 cases being tried in the superior courts from July 1, 1909, to June 30, 1910, as contrasted with 12,149 tried in the previous year. The most striking decrease is in the number of homicides, the number for 1909-10 being 141 in contrast with 188 during the previous year.²⁶

The report of the Attorney-General of Alabama presents a total of homicides in that state for the last eighteen years which is most alarming. From September 30, 1894, to September 30, 1910, there were exactly 4,264 cases of homicide "disposed of." The fiscal years ending on September 30, 1904, 1906, 1908 and 1910, show a total of 338, 669, 657 and 630 homicides, respectively. A total of 62½ per cent of convictions were obtained during the years 1908 to 1910.²⁷ Of the total number of 20,066 criminal cases reported, 38 per cent resulted in acquittal, were abated, or not tried. The Attorney-General points out that this habit of instituting frivolous prosecutions is demoralizing the judiciary.

We have now considered the judicial reports, and turn next to the reports of the various state prisons. Since the limits of this paper will not permit a detailed study of each state, we will limit ourselves simply to the inquiry whether or not crime has increased in these states since the last enumeration. The following table contains a statement of the prison population of six states for the years 1904-1910:

²⁵Annual report of Attorney-General of Michigan, 1910, p. 2.

²⁶Biennial report of Attorney-General of North Carolina, 1910, p. 15.

²⁷One hundred and twenty-one verdicts for murder in the first degree; 27 hanged.

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State.	1904	1905	1906	1907	1908	1909	1910
California (San Quentin Prison) ²⁸	1,476	1,558	1,588	1,549	1,702	1,814	1,922
Georgia (U. S. Penitentiary) ²⁹	194	203	222	212	299	293	237
Indiana (Daily Average) ³⁰	795	888.33	918.90	1,051.06	1,095.12	1,181.11
Maryland (Daily Average) ³¹	984.5	998.5	989.41	926.82	1,007.58	1,075.75	1,085.66
New York ³²	11,500	12,793	11,595	12,277	14,734	13,829	13,281
Washington ³³	693	770	840	887	1,016	1,121	901

Although these six states are not at all representative of the various parts of the country, they all show a substantial increase in the number of prisoners since 1904. This fact would seem to nullify the statement made in the United States Census Report that crime is on the decrease.³⁴ It is interesting to note in this connection that the high water mark in prison population was reached in 1908, in many prisons, the year after the business panic. A similar occurrence took place after the panic of 1893.

Many prison reports contain summaries for only a few years, and the following table tabulates the condition of crime in the other states whose reports I have examined:

State.	Number of prisoners on hand at end of fiscal year.			
	1907.	1908.	1909.	1910.
Connecticut	518	559	605	605 ³⁵
Iowa ³⁶	1,071	1,092
Kansas	1,314	890 ³⁷
Maine	227	209
Massachusetts (all prisons)	32,077	32,228
Minnesota Prison	1,694	706
Minnesota Reformatory	566	581
Mississippi	1,337	1,628 ³⁸
Ohio	1,565
Oregon	390	407
Pennsylvania (Eastern Penitentiary)	1,527	1,407
Virginia	1,325	2,027

²⁸Report of State Board of Prison Directors, 1910, pp. 50-51. Add to the number at San Quentin for 1910 the 1,016 confined at Folsom Prison and 316 men on parole. Total represents an increase of 11.2 per cent over previous year. (Folsom report incomplete.)

²⁹This prison serves as both a national and state penitentiary. See report of 1910, p. 11.

³⁰Annual Report of Indiana State Prison, 1909, pp. 30-31.

³¹Annual Report of Directors and Warden of Maryland Penitentiary, 1910, p. 9.

³²Sixteenth Annual Report of State Commission of Prisons, New York, 1911.

³³Fifth Biennial Report of State Board of Control, Washington state, 1911, p. 149.

³⁴The decrease in various states since 1908 or 1909 is simply apparent, where the number of arrests is decreasing, although crime is flourishing. This is especially true of New York. See reports of states mentioned above.

³⁵Of this number 131 committed for homicide or attempt.

³⁶Abstract from the Board of Parole report, 1910, pp. 29-130 (official figures).

³⁷Of these, 17 were United States prisoners.

³⁸Of this number, 789 homicidal prisoners, and 289 attempted homicide.

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This table, in my opinion, establishes the fact that in the various states the number of prisoners has been increasing at a varied rate. In some states, the increase has been particularly rapid, while in only two, the states of Maine and Pennsylvania, has the number of prisoners actually decreased.³⁹

Having discussed in the preceding pages in the light of the official data that were obtainable, the status of crime in this country up to the year 1910, we are forced to the conclusion that crime is on the increase, that it has grown for the most part steadily and with great rapidity in some parts of the country, and that a more fluctuating movement is noticeable in other parts. The question now arises, whether similar conditions exist in other parts of the world. The difficulties which attend a statistical comparison between various countries must be remembered. Not only do the methods of prosecution differ, but also the length of sentences, and the attitude of the public toward the criminal. In comparing conditions in the United States with those in Europe, we must remember that the statistical material in this country is purely penal, while that of the European countries is both penal and judicial.

By far the most efficient judicial and penal systems of the leading European countries have been worked out in England, France and Germany. Here the statistical material tells the same story. Crime is increasing in all three of these countries, but with not nearly the same rate of increase as in the United States. We shall consider first how crime in England⁴⁰ compares with that in the United States.

In the year 1909, the number of persons tried for indictable offenses (67,149) in England, while smaller than that in 1908 (68,116) was, nevertheless, considerably larger than that of any previous year. Crime in England before 1909 increased steadily from the beginning of the century, previous to which there had been a very perceptible decrease. The increase has become very marked since about the year 1895, the average number of persons tried yearly for indictable offenses during the periods of five years in the quarter session and assize courts being:

1895-99.....	51,050
1900-04.....	56,911
1905-09.....	63,438 ⁴¹

³⁹No real decrease in Kansas, for 646 prisoners were transferred to Oklahoma in 1909.

⁴⁰Includes Wales.

⁴¹Criminal Statistics of England and Wales, 1911, p. 22.

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In the courts of summary jurisdiction, where non-indictable offenses are tried, we have the following yearly average for each of the five years following 1895:

1895-99.....	700,517
1900-04.....	735,447
1905-09.....	692,869 ⁴²

The indictable offenses tried there averaged 39,182, 45,635 and 50,328 for the same periods.

Here we are face to face with the startling facts, that while serious crime is increasing in England, the lesser crimes are decreasing. The figures of 1909 (659,106), reaching the lowest, the highest figure during these years being that of 1904 (747,179). After this year, the number of persons tried becomes smaller until the year 1908, when it again rises from 685,574 to 688,964, while in 1909 another substantial decrease takes place.

The increase of persons tried for indictable offenses per 100,000 of population since 1895 has been:

1895-99.....	163.84
1900-04.....	172.47
1905-09.....	181.53
1909	187.79 ⁴³

The increase of crime has, however, in reality been greater than the figures indicate, for there is a growing disinclination in England to prosecute the less serious offenses, a growing inclination of leniency toward first offenders, and a growing reluctance to prosecute a thief who is certain to receive but a slight punishment.⁴⁴

In the United States, we notice similar conditions, though what is true in England with regard to minor offenses is true in the United States of the really serious offenses. The basic cause for this state of affairs in the United States differs essentially from that in England. In England, according to Mr. Simpson in his report on criminal statistics for 1909, a foolish and maudlin sentimentality is at the bottom of leniency. In the United States we must place the disinclination to prosecute at the door of our faulty criminal procedure.

The sentimentality of the English people, Mr. Simpson goes on to say,⁴⁵ has been growing since 1898. Although good results have been obtained in England, especially by the Borstal system for juvenile delinquents, and by the probation act, yet the eagerness to coddle

⁴²*Ibid*, p. 22.

⁴³*Ibid*, p. 24. It is interesting to note that the five-year averages of indictable offenses reported to the police are as follows: 1895-99, 79,459; 1900-04, 84,247; 1905-09, 99,141. Compare this average with that of the number of persons tried.

⁴⁴Judicial Statistics of England and Wales, 1911, p. 9.

⁴⁵*Ibid*, p. 10.

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criminals has amounted almost to a mania. For this the press of England is largely to blame. Not only does it invest the criminal with the charm of the highwayman of romance, but in addition it disseminates and fosters wrong and contradictory views with regard to the real state of criminality. For instance, one of the favorite methods of the press is to depict the increase of crime as a symptom of a revolt of the poor against the rich. This, of course, is an entirely mistaken idea, for the poor man and the "middle class" citizen are the very ones who suffer most from the thief. Of the 1,795 cases of larceny against the person, and of 47,363 minor larcenies, which came into court during 1909, most of the victims were laborers, and ill-paid clerks.⁴⁶

It appears, then, that there are approximately 100,000 more prisoners in England than in America, but that the proportional increase in crime has not been so great there as in this country. At the same time the attitude of the English public toward vigorous criminal prosecutions seems to be as sentimental as that with which we are only too familiar in our own country. Viewing the situation as a whole, however, we may say that the status of criminality in England, thanks to the efficient machinery of her courts, is less alarming than in the United States.

We now pass to France, the country which the sociologists take pride in pointing out as the land where crime has been constantly decreasing. Does the statistical evidence given below justify this conclusion? The number of cases tried before the French courts from 1901-1905:⁴⁷

1901.....	520,868
1902.....	523,783
1903.....	524,258
1904.....	538,557
1905.....	546,257

It is clear from this table that the statistics do not warrant the cheerful opinion of the sociologists. On the contrary, we find on closer inspection that the number of murders has been increasing with great rapidity. The following table contains the number of cases of homicide tried in France from 1901 to 1906:⁴⁸

⁴⁶*Ibid*, p. 11. In 1909 there were 182,816 prisoners in institutions, about 100,000 more than in the United States in 1904.

⁴⁷Compte Général de l'Administration de la Justice Criminelle pendant l'année, 1905, p. 10.

⁴⁸*Ibid*, p. 19.

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1901.....	163
1902.....	186
1903.....	222
1904.....	230
1905.....	274
⁴⁹ 1906.....	382

The number of misdemeanors tried in the correctional tribunals also shows a substantial increase from 1901-1905. The record stands:

	1901.	1902.	1903.	1904.	1905.
Cases tried.....	166,010	168,988	168,400	171,264	173,804
Persons accused.....	203,305	206,197	206,990	211,944	213,882

The ratio of convictions in both the superior and lower courts is high; the following table indicates the number of convictions and the proportion to the population:

Year.	Convictions, Court of Assizes.	Ratio per 100,000 of population.	Convictions, correctional tribunals.	Ratio per 10,000 of population.
1901.....	3,016	7.7	184,124	47.2
1902.....	2,878	7.3	184,769	47.2
1903.....	2,972	7.6	183,741	47.3
1904.....	3,063	7.8	186,065	47.7
1905.....	3,306	8.4	189,654	48.6

Although the number of cases tried indicate an increase in the criminality of France, the number of convictions, on the other hand, creates the impression that crime is stationary or that but slight fluctuations have occurred. We shall see that as in England the increasing spirit of leniency has had much to do with this. This is more particularly true of leniency to vagrants, which has cut down the total number of convictions since the act of 1897; vagrants, nevertheless, are becoming a positive menace to the public welfare. In spite of this decree, and various others of a similar nature which followed it, the number of vagrants arrested, rose from 19,000 in 1904 to 20,500 in 1907, a remarkable increase considering the subservience of the French police to decrees. The increase in serious crime has also been steady, especially in regard to larceny and abuse of confidence, the number of convictions going up in the last four years, 640, 654, 669 and 690.⁵⁰

There are several principal reasons given for the increase of crime in France. First to be mentioned is the dislike of the French people for prosecution, which seems to be due to the dilatory methods of the

⁴⁹Joly "Problèmes de Science Criminelle," p. 23. Joly, "Problèmes," etc., p. 27. The number of vagrants after the Act of 1897, which forbid their detention unless proven criminals, dropped from 19,356 in 1892 to 12,602 in 1898.

⁵⁰Joly, p. 26.

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courts and the inquisitorial methods of the police. In the second place, we should note the growth of fraudulent speculations and breaches of trust. The *Compte Générale* of 1892 remarks, for instance, that the criminality of the notaries, in proportion to their total number, has become 43 times greater than that of other French citizens. Long trials and almost certain impunity is an incentive to this class of criminals to continue their fraudulent practices.⁵¹ Crimes against chastity have incontestably increased. The very fact that in 1908, 62,638 women⁵² were arrested in Paris alone for unlicensed prostitution is undeniable proof that this form of social evil is assuming serious proportions.⁵³ Criminal immorality of any sort is a hotbed for crimes of violence.

But by far the most serious problem of France today is that of juvenile crime. In proportion to the population we find that the youth from 16 to 21 years of age are the most criminal part of the population. The following table⁵⁴ indicates the ratio:

	Convicted, 16-21 years of age, for every 10,000 of population.	Convicted, over 21 years of age, for every 10,000 of popu- lation.
Crimes against chastity.....	1.9	1.7
Petty larceny.....	291	113
Grand larceny.....	9.6	2.3
Arson.....	0.6	0.4
Abuse of confidence.....	16	11
Assault.....	187	114
Homicide.....	4.0	2.22

It is impossible to say whether this juvenile criminality is due to laxity in family life or not.⁵⁵

The conditions existing in France may be summed up as follows: The analysis of statistics shows that crime is increasing, but not at the same rate at which it is growing in the United States. Moreover, although both countries show similar growth in juvenile crime, juvenile delinquency is of a much more serious nature in France.

Of all continental European states, Germany seems to have worked out the most perfect system of criminal procedure. A corresponding perfection is to be found in the criminal statistics of Germany, which since the year 1882 have been absolutely reliable.

⁵¹Joly, p. 36.

⁵²Report of the Prefecture of Police (Paris), 1908, p. 4.

⁵³Clandestine Prostitution is strictly regulated in France.

⁵⁴Joly, *Problèmes*, etc., p. 74.

⁵⁵French family life, as M. Joly points out, is gradually being undermined by various causes, and he attributes the increase to causes of this nature.

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The number of convictions from 1899 to 1908 is as follows:⁵⁶

Year.	Persons accused.	Persons convicted.	Punishable actions.
1899.....	605,274	478,139	574,339
1900.....	593,136	469,819	563,819
1901.....	627,592	497,310	593,972
1902.....	650,210	512,329	609,790
1903.....	643,297	505,353	601,563
1904.....	660,857	516,976	611,082
1905.....	661,802	520,356	615,006
1906.....	676,799	533,767	639,938
1907.....	674,674	530,723	624,242
1908.....	696,127	548,410	643,396

This table shows a considerable increase of crime in Germany. If we take the year 1882 as a starting point the increase is still more noticeable.

In 1882 the number of persons condemned was 996 out of every 100,000, whereas in 1908 the number was 1,221. This is an apparent increase of 22.6 per cent. But the figures do not represent the true ratio of increase, for since the year 1882, the number of new statutory crimes has grown greatly. In the year 1908 there were about 25,000 persons convicted under laws that had been passed since 1882, thus reducing the number of convictions from 1,221 to 1,165 per 100,000 population, and making the ratio of increase 17 per cent instead of 22.6. Nor has this increase taken place in the groups of serious crimes, but rather in the groups of misdemeanors.

In the divisions of serious offenses, an examination of the statistics shows that the crimes of manslaughter, duelling, rape with misuse of trust, and crimes against property, recidivists have not grown in number appreciably; the statistics fluctuate from year to year. On the other hand, robbery, assault, libel, blackmail, grand larceny, violations of child labor laws, rape and practically all of the crimes against chastity have increased considerably. At the same time the increase in a large number of these latter crimes has been caused by the passage of new laws and by the more stringent enforcement of existing statutes. Seventy-five per cent of the increase within this group consists of crimes of violence, especially dangerous assaults; crimes of violations of trust⁵⁷ and larceny form 20 per cent; and crimes against chastity 5 per cent of the total increase.⁵⁸

Murder, fraudulent bankruptcy, petit larceny, crimes by officials, and a few others show a slight decrease. Contrast this state of affairs with conditions in the United States where there is scarcely any group

⁵⁶*Statistisches Jahrbuch für das Deutsche Reich, 1901-10. Statistik des Deutschen Reichs, Kriminalstatistik, 1890-1907.*

⁵⁷Compare with increase in France.

⁵⁸*Statistische Monatschrift, Jan., 1911, pp. 1-3.*

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of serious crimes which is not increasing, and this is true above all of the crime of homicide.

German writers and statisticians are not at a loss to account for the increase in crime in their country. One of the foremost reasons they give is the "sickly rage for leniency." But by far the most significant cause, they recognize in the change of the moral thinking of the people, a change which Dr. Forcher characterizes in the following terms: "Perhaps deterministic spectres from the decayed province of hyper-culture have had their hand in the game, and in the course of time have destroyed all of our conceptions of guilt and atonement."⁵⁹

Two other essential causes have likewise been pointed out as affecting the increase in crime in Germany. The leniency toward first offenders, the short sentences for serious offenders, and the fact that the German judges have fallen into the rut of routine and no longer interpret the spirit, but only the letter of the law. This state of affairs differs from that in the United States, where sentences are long enough, but where maudlin sentimentality and faulty procedure interfere, long before sentences can be rendered.

Such in brief are the conditions of crime in the leading European countries. That they are in many ways similar to conditions in this country, the writer need but indicate. Nevertheless, the problems which confront us in this country are in many respects more serious. Lack of space prohibits us from entering into a discussion of the causes and the best means of their remedy. It is not only necessary for us to build up a more effective administrative machinery, but we must seek to correct those intrinsic faults in our national character which suffer these criminal conditions to exist.

In conclusion, I wish to add, that in the face of a serious situation such as confronts our nation, nothing could be more frivolous and dangerous than mere experimentation. The disease which is eating into the very marrow of our social body needs heroic treatment. At all events the situation is one which demands the attention and study of the leaders of American thought and action. The shocking amount of crime in the United States, and especially unpunished crime, is exceedingly discreditable to us as a nation and indicates a standard of civilization of which we cannot be proud.

⁵⁹*Statistische Monatschrift*, Jan., 1911, p. 35.

INFERENCE FROM CLAIM OF PRIVILEGE BY ACCUSED.

WALTER T. DUNMORE,

Dean of Western Reserve University Law School.

Proposal number three submitted by the recent Ohio Constitutional Convention to the voters of Ohio for ratification contains the provision that, "No person shall be compelled, in any criminal case, to be a witness against himself, but *his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel.*" This proposal was adopted by a very large majority when submitted.

Before the adoption of this proposal, the Ohio constitution, ratified in 1851, in *Article I, Section 10*, contained, among other provisions, the words, "Nor shall any person be compelled, in any criminal case, to be a witness against himself." The Code of Criminal Procedure adopted by the Ohio legislature May 6, 1869, provided in *Section 140*: "In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offenses, the person so charged, shall, at his own request, but not otherwise, be deemed a competent witness; nor shall the neglect or refusal to testify create any presumption against him, nor shall any reference be made to, nor any comment made upon, such neglect or refusal." A similar provision is still found in The Ohio General Code of 1910, *Section 13661*.

In view of the fact that nearly all of the states have embodied in their constitutions similar provisions, and that in all but three American jurisdictions there is legislation prohibiting the state from availing itself of any inference by reason of the failure of accused to testify, the question arises whether the change made by Ohio is a defensible one and one which should be made in other jurisdictions.

To answer intelligently this question, it first must be decided whether defendant should be required, in a criminal case, to testify as any other person.

In Volume 2, page 216, of the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Mr. Charles R. Bostwick takes the position that defendant should be available to the prosecution as a witness. Not a few lawyers now may be found who agree with Mr. Bostwick, and those who do so would doubtless find no fault with the Ohio amendment except that it does not go far enough. One of the most distinguished jurists to take a position against the rule excusing the accused from giving self-disserving testimony was Jeremy Bentham. Many lengthy argu-

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ments relative to this privilege of accused might be restated, but it is believed that a very brief review of the reasons suggested by Bentham will serve to clear the way for the ascertainment of the reason why the privilege remains everywhere so firmly intrenched.

In Volume 7, at page 451 of Bentham's Works, as published by his executor, John Bowring, is found a discussion of what Bentham terms "Pretences for the Exclusion." According to Bentham, these pretences are five in number:

(1) The position is taken by some that the propriety of the rule excusing defendant is too clearly evident to admit of any dispute. There certainly is nothing in the history of the rule as given in Bentham's Works, Volume 7, page 458, to justify the taking of any such position and that many take this position is no argument for its soundness. Bentham clearly was justified in ignoring those on whom all argument would be lost.

(2) "The old woman's reason." This reason is that it is a hardship for the accused to be obliged to incriminate himself. Bentham is easily able to expose the fallacy of such an argument. In fact the courts have taken the position that the privilege is for the benefit of the innocent and not of the guilty,¹ and probably no one would now urge that the hardship in the case of an accused who is actually guilty is any reason why he should not be compelled to testify against himself.

(3) "The fox-hunter's reason." This conception merely introduces into legal procedure the idea of fairness, the idea that accused should be given a sporting chance for his escape by acquittal. The "game" theory of a lawsuit already has too strong a grasp upon our law of procedure and with the numerous safeguards now thrown about accused, even the most conservative probably would not consider this reason as possessing any considerable merit.

(4) "Confounding interrogation with torture." If accused were compelled to testify, the method of extorting confessions to which recourse is so frequently had by police officers would be unnecessary to a very large extent. Far less physical torture would result from the examination in open court than now results from the continued efforts to extract a statement before trial.

(5) "Reference to unpopular institutions." Because confessions were extorted under the Inquisition and in the Court of Star Chamber, therefore one now should never be compelled to incriminate himself. This association has doubtless been of prime importance in giving the

¹J. Byles in *Bartlett v. Lewis*, 12 C. B. N. S. 249 at 265, "The rule was intended for the protection of the innocent, and not for that of the guilty."

privilege the dignity of constitutional protection, but nevertheless it is difficult to find therein any real argument for the privilege. It must be kept in mind that this privilege arose at a time when accused was not permitted to testify in his own behalf and that conditions are not at all similar at the present time.

To those who are considering the privilege from a theoretical standpoint, the protection of the accused from judicial questioning at the trial seems indefensible. The rule seems to prohibit the investigator after truth from going to the primary source and to force his reliance upon secondary and less satisfactory evidence. The parent seeking to ascertain whether his child has been guilty of any delinquency prefers to question that child directly, rather than to receive the statements of a number of other children. Everyone feels that the natural way to learn of the guilt or innocence of the accused is to question him directly. The writer has always had difficulty in placing the defense of this privilege upon a logical basis, and if the reasons suggested by Bentham were the only ones in favor of this privilege, it seems that no defense of the rule could be maintained.

Unbiased defenders of this privilege, however, recognize that it is practical considerations which must constitute their defense. Undoubtedly this privilege is highly advantageous to the guilty, but we must remember that some of those placed on trial are innocent. Sir James Stephen in his *History of the Criminal Law of England*² says that the fact that the prisoner cannot be interrogated "stimulates the search for independent evidence." That this is true cannot be questioned. Professor Wigmore after a careful consideration of the history and policy of this privilege concludes,³ "that any system of administration which permits the prosecution to trust habitually to compulsory self-disclosure as a source of proof must itself suffer morally thereby."

In the rush of criminal business the prosecution would depend more and more upon its ability to build a case upon defendant's own testimony. The prosecutor would be strongly tempted to seek by clever questioning the answers which would help toward establishing the guilt of the accused. The abolition of the privilege, in actual practice, tends to place in jeopardy the safety of the innocent person charged with a criminal offense by leading to a careless examination of sources of proof other than the testimony of the accused. American lawyers who have attended a criminal trial in France or have read a full report of such a trial seldom urge that the method of questioning accused leads to a more

²Vol. I, p. 442.

³Vol. IV, Sec. 2251, p. 3097.

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fair and dignified trial. One has but to read an account of a French prosecution such as that of the Monk *Léotade*⁴ to have raised in his mind serious doubts as to the practical wisdom of abolishing the privilege in question. The time may come when attorneys for the state will be so little partisan that innocent defendants will need no such protection as now exists, but the writer believes that the experience of other countries does not warrant the present abolition of this privilege which now exists in every American jurisdiction.

If the privilege against compulsory self-disclosure should be retained, the question remains whether there is any justification for a change which would permit an inference from the claim of this privilege by the accused.

A logical justification for such an inference might be made by taking the ground that the position of the accused as a defendant and as a witness is a dual one, and that the failure of accused to produce himself as a witness is the same as his failure to produce any other witness. The dual position of accused is frequently recognized in other connections. If accused does testify voluntarily, the state is usually permitted to prove the commission of other crimes by accused to attack his credibility as a witness, although such evidence of other crimes is clearly inadmissible in proof of his guilt of the crime charged when guilty knowledge is not involved. Strictly speaking, it is difficult to see how the personal privilege not to testify is violated so long as accused is not actually required to testify. However, in justifying a change in reference to a privilege so universally granted, something more than a mere technical justification must be found.

As before stated, it appears that the privilege against compulsory incrimination can be defended only by reason of practical considerations. It has seemed to nearly all courts and text-writers that exactly the same practical considerations should prevent the making of any inference when accused avails himself of his privilege. If requiring accused to testify directly would cause the prosecution to rely for proof upon the testimony of defendant rather than upon a careful investigation of other sources of evidence, would not the same result be reached if prosecution could rely either upon the testimony of accused or upon the inference of guilt which would be urged strongly upon the jury when accused failed to take the stand? It must be admitted that the difference in the evil involved between compelling accused to testify, or in permitting an inference from his failure so to do is after all only

⁴An account of this case is given in Sir Stephen's History of Criminal Law, Vol. III, p. 466.

a difference in degree. To a certain extent the prosecution would doubtless rely upon the advantage given it by virtue of the inference. Nevertheless, it seems clear that the prosecution could rely far less upon the inference than it could upon a right to call accused as a witness for the state. The prosecution, even when inference is permitted, has no benefit therefrom until a sufficiently strong case has been presented to the tribunal to warrant the submission of the case to the jury. The prosecution must make an investigation thorough enough to reveal evidence, other than testimony of accused, sufficient to make out a *prima facie* case and to sustain its burden of proof. The prosecution in France may bring a defendant to trial with hope of success, even when there is little evidence of his guilt obtained from sources other than the accused, because of reliance upon the right to examine him, but the state under the Ohio amendment must in the first instance at least produce substantial evidence of guilt without the aid of defendant's testimony. It seems, therefore, that this difference in degree is such a substantial difference that there is no reason to expect the same evils from merely permitting an inference as would probably result from permitting prosecution to rely upon testimony of accused as part of its evidence in chief.

We unhesitatingly admit as evidence the conduct of accused out of court when charged with crime and from the point of view of logical relevancy, there is no possible objection to permitting an inference. In fact, it is inevitable that the jury will make the inference. Allowing counsel to comment upon failure of accused to take the stand and thus to emphasize the inference will take away from a guilty defendant a protection to which he is not entitled, without a corresponding danger to an innocent accused because of a failure properly to investigate his case.

The writer believes that the weight of practical considerations is all that makes it expedient to continue the privilege against compulsory self-disclosure in criminal cases, that these practical considerations have not the same weight in connection with the inference from claim of privilege and that, in view of the extreme need in America of more certainty of punishment, the inference permitted by the Ohio amendment will be of decided value in criminal prosecutions.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

PROFESSORS CHESTER G. VERNIER AND ELMER A. WILCOX.

ABDUCTION.

People ex rel. Howey v. Warden of City Prison, 137 N. Y. Supp. 268. *Elements of Offense*. The character of the place into which a female is inveigled is an essential element of the offense of abduction, under Penal Law (Consol. Laws 1909, c. 40) a 70 subd. 2, providing that a person who inveigles an unmarried female of previous chaste character into a house of ill fame, or of assignation, or elsewhere, for purpose of sexual intercourse, is guilty of abduction, and the place must to some extent be a place for purposes of prostitution; and one who induced a female to take an automobile ride with him, and who on the return trip attempted to assault her on or near a public highway, is not guilty of "abduction."

ARRAIGNMENT AND PLEA.

State v. Heft, Ia., 134 N. W. 950. *Waived by Going to Trial*. After conviction of felony the defendant moved in arrest of judgment because the record showed that a demurrer was pending at the time of trial and remained undisposed of until after the verdict and did not show any arraignment of or plea by the defendant. Held that as the grounds stated in the demurrer were not such as to justify the trial court in sustaining it, the defendant suffered no prejudice from the failure to rule thereon. While the absence of a plea would have been fatal at common law, under statutes designed to avoid setting aside verdicts for technical errors in the procedure which have in no way prejudiced the defendant by depriving him of full opportunity to make his defense, especially a provision that if the defendant fails or refuses to plead a plea of not guilty must be entered, the failure to make the formal entry will not prevent the court from rendering judgment on the verdict. By going to trial on the merits the defendant waived the irregularity in the proceedings. Under a statute requiring the court to "examine the record without regard to technical errors or defects which do not affect the substantial rights of the parties and render such judgment on the record as the law demands," the court will refuse to reverse for technical errors which it is manifest from the record could not have prejudicially affected the defense. If an error which the defendant might have taken advantage of before verdict is not thus brought to the court's attention, and is not of such character as to require the granting of a new trial or the sustaining of a motion in arrest of judgment, it will not be considered on appeal, unless it affected the merits of the case to the defendant's prejudice.

CONSTITUTIONAL LAW.

Robertson v. State, Tex. Or. App., S. W. 533. *Confrontation*. Defendant was tried and convicted of murder. On appeal the conviction was set aside. A witness who testified at his trial died and another returned to Italy and remained there. Defendant was tried again, and the testimony given by these two witnesses at the first trial was read to the jury at the second trial. It was contended that this deprived defendant of his constitutional right to be "confronted by the witnesses against him." Held that the confrontation clause was put into the Texas constitution with the construction that it had already received in other jurisdictions. A full review of English and American decisions

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and text books showed that this construction permitted the reproduction of such testimony when the witness was dead, beyond the jurisdiction of the court, insane, or kept away by the connivance of the accused. This had been the rule in Texas until 1896 when it was overthrown by the decision in *Cline v. State*, 36 Tex. Cr. R. 320, 36 S. W. 1099, 37 S. W. 722, 61 Am. St. Rep. 850. This case was overruled in *Porch v. State*, 51 Tex. Cr. R. 8, 99 S. W. 1122. In *Kemper v. State*, 138 S. W. 1025 the *Porch* case was overruled and the *Cline* case affirmed. The court adopted the construction found in the earlier Texas cases and in the *Porch* case and overruled the *Cline* and *Kemper* cases.

State v. Doran, S. Dak., 134 N. W. 53. *Regulation of Physicians*. A statute provided for the examination and licensing of physicians and surgeons and prohibited unlicensed persons from practicing. Itinerant physicians and surgeons were required to procure an itinerant's license also and to pay a fee of \$500 per year. Resident physicians and surgeons, licensed and practicing when the act took effect, were excepted from both provisions. A non-resident was convicted of practicing as an itinerant physician without a license. The court said that it was within the police power to prescribe qualifications for the practice of medicine and surgery and to require a license as evidence that the practitioner was qualified. Those already in practice in the state when the act took effect might be permitted to continue, as the fact that they had been practicing was sufficient evidence of proficiency and equivalent to examination and license. The legislature has power to lay an occupation tax on physicians and surgeons, can properly divide them into two classes. (1) itinerants, and (2) all others, and can lay the tax upon one class and not upon the other. But it was held that the exemption of a part of the class of itinerant physicians, those residing in the state, licensed and practicing there when the act took effect, violated the provision of the state constitution that "All taxation shall be equal and uniform." If the provision was intended to classify itinerant physicians into (1) those residing and practicing in the state when the act took effect and (2) those then residing and practicing out of the state, it violated Art. 14 (Art. 4, sec. 2) of the constitution of the United States, because it discriminated against citizens of other states. As the legislature did not intend to subject resident licensed physicians to the tax, and this would result from holding the exemption void and the tax valid, the entire portion of the act relating to itinerant physicians was adjudged to be void. It was said that the rest of the act was valid.

EMBEZZLEMENT.

Frost v. State, Ind. 99 N. E. 419. *Sufficiency of Affidavit*. Crimes Act 1905 (Burns' Ann. St. 1908, a 2285) a 392, denounces as embezzlement the purloining, secreting, etc., of money deposited with or held by a person, firm, corporation or association, by its officer, agent, or employee, who has access to or possession of the money converted. An affidavit purporting to present a charge of embezzlement alleged that a certain person was treasurer of an Odd Fellow Lodge, "and as such treasurer * * * had control and possession" of a sum of money, "the property of the said * * * order of Odd Fellows," and while such treasurer and so possessed of the money converted it. Held that, although the affidavit does not allege that the money was in possession of such defendant "by virtue of his employment," a "treasurer" is one who is intrusted with money, and "as such" means "in that particular character," so that the allegation that the defendant, was a treasurer, and as such had control of the funds which he

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converted, means that the character of his possession was in his trust relationship, and renders the affidavit sufficient to charge the offense denounced.

ERROR.

McElwain v. Commonwealth, Ky. App. 142 S. W. 234. *Fair Trial*. "Modern thought and modern spirit in criminal procedure will no longer tolerate the rigid technicalities once enforced in the defendant's favor in criminal prosecutions. This court has in its recent declarations aligned itself with the modern view. Its purpose is to examine the record in an effort to ascertain whether the defendant has been fairly tried—a fair trial not measured by iron-clad and inelastic rules so frequently thwarting justice, or wearing away by delays and reversals the possibility of applying justice, but measured instead by the searching application of reason to test from the record whether justice has been done. When such an examination discloses no substantial error against the defendant during the progress of the trial, such as would interfere with his obtaining substantial justice, the judgment will be affirmed."

FORMER JEOPARDY.

Commonwealth v. Prall, Ky. App., 142 S. W. 202. *Action to Recover Fine*. A statute provided that any one who should damage a public highway by unusual use, and fail to repair the same after due notice, should be subject to a fine not exceeding \$100. An action was brought to recover this fine. Judgment was given for the defendant. The state appealed and the judgment was reversed. Under statutory authority the case was retried and judgment given for the state. On appeal it was contended that the statute violated the constitutional provision that no one "shall, for the same offense, be twice put in jeopardy for his life or limb." Held that indictments for misdemeanors which subject the defendant to a fine only, are like penal actions, to be treated as a civil suit to collect the fine. Hence they are not within the constitutional provision as to double jeopardy.

IDENTITY OF OFFENSES.

People v. Grzeszczak, 137 N. Y. Supp. 538. An acquittal of the charge of arson is not a bar to a prosecution for attempted robbery in the first degree, though the facts in the two cases are identical. But, where on a trial for arson, the only litigated question was the presence of the accused at the place of the offense, and he was acquitted, the question of his presence cannot be again tried in a prosecution for attempted robbery involving the same transaction.

INDICTMENT.

People v. Yarter, 137 N. Y. Supp. 462. *Form of Allegation*. An indictment for violation of the local option law, alleging that four questions provided by Liquor Tax Law (Laws 1896, c. 112) a 13, were "duly submitted," was sufficient without expressly alleging various preliminary steps requisite to the legal submission of such questions; the terms "duly submitted" implying the existence of every fact essential to the proceedings.

People v. Wacke, 137 N. Y. Supp. 652. *Form of Allegation*. An information charging that accused "did unlawfully operate" a moving picture show, being a common show, in violation of the ordinances of the city, stated a conclusion of law, and not a matter of fact. The omission from an information charging the unlawful operation of a moving picture show of the words "without a license" is not a mere failure to allege a matter of form, but is the omission of a matter of substance.

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INDICTMENT AND INFORMATION.

State v. Heft, Ia., 134 N. W. 950. *Indorsement by Foreman.* A statute required every indictment to be indorsed "A true bill," and the indorsement to be signed by the foreman of the grand jury. Non-compliance was made ground for a motion to set aside the indictment, to be made before demurrer or plea. An indictment bore the certificate of the clerk of court that it had been presented in open court, in the presence of the grand jury, by their foreman. The statutory indorsement had not been signed by the foreman. The defendant moved to set aside the indictment, but it did not appear that he had relied on this defect as a ground for the motion. His motion was overruled and no exception to the ruling was taken. After conviction he moved in arrest of judgment on this and other grounds. It was held that the defendant either had failed to raise the objection in the manner required by the statute, or if he had so raised it had acquiesced in the adverse ruling of the lower court, and could not subsequently take advantage of the defect by a motion in arrest of judgment.

INJUNCTION AGAINST ENFORCEMENT OF CRIMINAL STATUTE.

State v. Wadhams Oil Co., Wis., 134 N. W. 1120. *Not a Defense.* The defendant sued to enjoin the state supervisor of inspectors from enforcing the oil inspection law, on the ground that it was unconstitutional, and a temporary injunction was issued. The law was ultimately held to be constitutional and the temporary injunction dissolved. The defendant was then prosecuted for a violation of the law committed during the period when the injunction was in force and was convicted. The trial court certified to the supreme court the question whether the injunction was a defense to the criminal prosecution. Assuming, without deciding, that the injunction was valid, the court held that the injunction merely protected the property rights of the defendant and preserved the status quo until final judgment upon the merits. It postponed the enforcement of the law until the rights of the parties under the law were fixed by the final judgment, but did not exempt the defendant from the operation of the law or suspend it as to him. In violating its provisions he acted at his peril, if the act should finally be adjudged to be valid.

INSTRUCTIONS.

Schuster v. State, Ind. 99 N. E. 422. *Jury as Judge of the Law.* An instruction that the jury were the judges of the law as well as of the facts, and, if they could each say on their oaths that they knew the law better than the court, then they had the right to do so, but, before assuming such responsibility, they should be assured that they were not acting from caprice or prejudice, and were controlled by a deep conviction that the court was wrong, and that, before saying that, it was their duty to reflect whether they were better qualified to judge the law than the court, and if under those circumstances they were prepared to say that the court was wrong, the Constitution gave them that right, was erroneous as restricting the jury's authority to determine the law and the facts conferred on them by the Constitution (Burns' Ann. St. 1908, a. 64), providing that in all criminal cases the jury shall have the right to determine the law and the facts.

INTOXICATING LIQUORS.

Van Valkinburgh v. State, Ark., 142 S. W. 843. *Soliciting Orders.* Defendant was convicted of soliciting orders for intoxicating liquors in prohibition ter-

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ritory. The following facts were proved: Defendant was a licensed liquor dealer. His night bartender, while in prohibition territory, received an order for liquor, with the money to pay for it. He did not solicit the order, but was asked to send the liquor and agreed to do so as an accommodation. The bartender gave defendant the money in defendant's saloon and told him who wanted the liquor, and defendant shipped the liquor into the prohibition territory by express. The statute provided that any person who receives an order for intoxicating liquor from another and transmits it to a dealer who accepts and fills it is an agent of the dealer. Held that acceptance of the order was tantamount to soliciting it in prohibition territory. The conviction was affirmed.

People v. Martin, Mich., 134 N. W. 1114. *Place of Sale*. A statute prohibited any person directly or indirectly himself or by his clerk, agent, or employee, from manufacturing or selling intoxicating liquors in prohibition counties. A county in which a brewery was located voted prohibition. The brewery company ceased to operate its brewery, but kept an office open, in charge of a bookkeeper. It incorporated and established a place of business in a license county where it sold beer which it bought from another brewing company which was operating in license territory. The bookkeeper in the prohibition county received and forwarded to the place of business in the other county a written order for one case of beer and also payment for the same. The order provided that the beer was to be shipped to the purchaser at a town in the prohibition county by a designated railroad, "All beer to be delivered to me" at the place of shipment in the license county "f. o. b.," and the order was not to become binding on the company until filed at its office in the license county and the approval of its secretary indorsed thereon. The order was approved and the beer delivered to an express company in the license county, which delivered it to the purchaser in the prohibition county. The company's secretary was convicted of unlawfully selling intoxicating liquor in the latter county. Held that as the secretary and his associates were responsible for the presence of the bookkeeper in the open office, clothed with authority to take orders and accept money for beer, he indirectly made the sale in that county where the order was given and the money paid over, in spite of the recital that the order should not be binding until filed and approved in the other county. He therefore fell within the letter as well as the spirit of the statute.

JUVENILE COURT ACT.

U. S. v. Behrendsohn, 197 Fed. 953. *Constitutionality*. Since Civ. Code La. art. 305, provides that a father may be excluded from the tutorship of his child for notoriously bad conduct and for other reasons, Louisiana Juvenile Court Act (Acts 1908, No. 83) providing that a parent may forfeit his right to the custody of a child if he is derelict in his duty toward the child, is not in conflict with the Code or unconstitutional as impairing the inalienable right of a parent to the custody of a child.

PLEA IN ABATEMENT.

State v. Tam, Ind. 99 N. E. 424. *Demurrer*. The proper form of demurrer to a plea in abatement in a criminal case is that the plea does not state facts sufficient to quash the indictment, information, or writ, or to abate the action; and a demurrer to a plea, on the ground that it does not allege sufficient facts to constitute a defense, is properly overruled.

RAPÉ.

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People v. Seaman, 137 N. Y. Supp. 294. *Corroboration*. Testimony of the sister of complainant, in rape, that defendant, who was riding with them, took complainant from the wagon and carried her over a fence, that on account of the darkness she could not thereafter see them, but that she heard complainant's cries for help, and that on their return complainant said it hurt her, is not corroboration of penetration, necessary, under Penal Law (Consol. Laws 1909, c. 40) a 2013, for conviction.

SENTENCE.

Munson v. McClaghrey, 198 Fed. 72. The sentence of a defendant, convicted on two separate counts of an indictment, under sections 5478 and 5456 or 5475, Revised Statutes (U. S. Comp. St. 1901, pp. 3683, 3694, 3696), of burglary of a postoffice building with intent to commit larceny and of larceny committed at the same time and as a part of a continuous criminal act, to separate punishments for the burglary and the larceny, is ultra vires and void as to the sentence for the larceny, and after the defendant has satisfied the sentence for the burglary he is entitled to his release on habeas corpus.

TRIAL.

People v. Goldfarb, 137 N. Y. Supp. 284. *Improper Conduct of District Attorney*. Where, in a prosecution for receiving stolen goods, the proof of defendant's guilty knowledge was scant, and the chief witness for the people had been indicted for receiving from defendant the stolen goods, knowing of the larceny, it was error for the district attorney during the examination of the witness, to state to the court: "We had to indict him and bring him to trial to get any information at all."

State v. Ward, Minn., 134 N. W. 115. *Intent in Breaking and Entering*. Defendant was indicted for breaking and entering a room in a hotel, the room being in the possession of the manager of the hotel, with intent to steal the manager's property. The proof was: The manager was in possession of the hotel, room, and the furniture, towels and other equipment of the room. Three guests were occupying the room. The door was closed when they retired. Early in the morning one of the guests saw the defendant in the room, upon his knees on the floor, removing a pocketbook from the trousers of one of the guests. The defendant was not a guest of the hotel. On being discovered he attempted to escape, and seriously injured a guest who tried to stop him. It was held that there was no variance between the charge and the proof. The gist of the offense was breaking and entering the room with intent to commit larceny therein. The intent with which the defendant entered may be inferred from his attempt to commit larceny. The time and circumstances of his entrance and the acts done by him were amply sufficient to show that his entrance was not with the consent of the owner. It was sufficient that the building and room were in the possession and control of the manager of the hotel.

NOTES ON CURRENT AND RECENT EVENTS.

ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE.

The Scientific Study of Juvenile Delinquents in Minneapolis.—The Juvenile Protective League in Minneapolis has just undertaken a study of delinquents which has some new features and promises to become of more than local importance. Dr. Harris D. Newkirk, a Minneapolis physician who has been specializing in children's diseases, has been engaged to give the necessary medical services for a five-year campaign against the physical troubles of the boys and girls who get into the juvenile court and also to administer a plan for a more thorough study of the serious type of juvenile offenders. It was decided to include the psychological aspect of the problem along with others. As a result of some studies we had been making at the University of Minnesota in connection with the clinic in mental development, the writer was enlisted to assist by giving as much of his time as possible to this work. The following outline of the plan as far as it has been formulated has been prepared at the request of the editor of the Journal:

In one particular we seem to be especially favored, and that is in our opportunity to follow up the diagnosis of physical and mental deficiencies by remedial treatment, medical, surgical and educational, and to watch the same children for a long period. It is here that our work should ultimately be most instructive. In other cities it has been very rare that those who have been examined either medically or psychologically, or whose home conditions have been investigated, have been raised out of the ruts and their capacities subsequently watched as they were tried out on smoother roads. This, of course, requires the most persistent, time-taking effort and too much should not be expected. Only a small number of cases can, with the present facilities, be followed up with treatment and training. Moreover, there is all the uncertainty of working with human material which may suddenly be lost from observation. Already, however, Dr. Newkirk has made a very creditable beginning. Besides examining 107 cases during the first six months he has operated on 33 cases of adenoids, 28 cases of enlarged tonsils, circumcised 22, removed a troublesome appendix and given medical advice and treatment to numerous others. As a result decided improvement in health and conduct is not unusual. A friend of the league has generously provided a nurse who devotes all her time to the delinquents under treatment and to visiting their homes to give suggestions there. Largely through her assistance we are reaching about eight out of ten of those examined who seriously need surgical attention. St. Barnabas Hospital has placed at the disposal of Dr. Newkirk enough of its charity fund to care for the needy cases while at the hospital. Arrangements have been made also for eye examinations by specialists and supplying spectacles when required. Several local hospitals, physicians and charitable organizations lend their aid freely. Dr. Newkirk's records show that among 68 delinquents whose examinations during the first three months have been summarized, only two were without defects. The most serious difficulties were enlarged tonsils or adenoids, 29 cases; defective vision, 35 cases; malnutrition, 13 cases; anemia, 11 cases; defective hearing, 5 cases.

STUDY OF JUVENILE DELINQUENTS IN MINNEAPOLIS

No argument is required to demonstrate the need of caring for the health of the delinquents and immediate correction of their physical handicaps. It is not so clear that it is advisable to attempt to modify their home or educational environments on account of the prolonged attention necessary and the uncertainty of the results. Our plan, however, is to make a complete history of as many cases as time will permit and then to attack the problem of training the delinquent as well as treating him. We assume that removing a physical handicap which has existed for years will leave the youth still seriously retarded and especially in need of educational assistance if he is to become properly adjusted to his social environment. In the history of the cases we expect to give adequate attention to the physical, mental, moral, educational and social factors. Cards have been provided for preserving all this data in the form of indexes, and two rooms in the court house have been assigned in which to make examinations. The nurse and the admirable corps of probation officers who are enthusiastic over any suggestions for improving their charges will assist us in completing the record of the cases studied.

An examination of the mental development reached will be made in the case of all recidivists and in other cases when desirable. For this purpose a series of tests are being arranged especially for the mental ages over ten which we meet most frequently. They will supplement the Binet scale and the tests devised by Dr. William Healy. I am spending considerable time in selecting and adapting these from the scores available in the psychological literature. Miss Eunice Peabody is trying out the tests on groups of school children to establish norms which will be available for our diagnosis. The question whether a child should be sent to the school for feeble-minded may now be fairly well settled by means of the knowledge of his physical and educational handicaps in connection with the degree of development reached as measured by the Binet tests. We know least about the question how much children will profit from special training. This is an educational problem of prime importance in our work as we must endeavor to select the children to be trained in order to get the largest result with the time that can be spared from other duties. I shall, therefore, study the problem of prognosticating improvement and try to devise special methods for reaching the child through his school. The city superintendent, Dr. Charles M. Jordan, has promised that the teachers of ungraded pupils in the schools from which the delinquents come will assist in carrying out these special directions for the school work.

It is important to recognize that this work could not have been undertaken except for the foundation which the Juvenile Protective League has been laying for the past six years with the hearty co-operation of the judges of the juvenile court. Judge John Day Smith, who organized the court in 1905 and helped to start many of its present agencies, when he became senior district judge in 1911, was succeeded by Judge Edward F. Waite. The latter was chosen primarily for the juvenile court work and like his predecessor combines in a marvelous way the dignity of the judge with the sympathy and encouragement of a father who can yet punish severely when necessary. The county has acquired an attractive farm of 92 acres on a little suburban lake, which is being developed into a small but model detention home—the Glen Lake Farm School for Boys. This is a special pride of Judge Waite who has plans for a series of cottages there to accommodate about fifteen each to meet the growing needs of the community.

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At present forty to fifty boys can be kept at the farm and given healthful employment surrounded by the home influences of an inspiring director and his wife. The boys also have school work for part of the day. The farm school thus forms an important adjunct to our plans for training. At various times the league in its efforts for children's welfare has introduced and supported probation officers, night agents, vacation schools with their summer playgrounds, and a boys' club. At its last annual meeting the lecture by Dr. William Healy of Chicago did much to crystallize the decision to undertake the present study. It is thus endeavoring not only to help the delinquents more fully but to add in a small way to the constructive knowledge about the diagnosis, treatment and education of these embryonic law breakers.

J. B. MINER, University of Minnesota.

Is Vasectomy a Cruel and Unusual Punishment?—State of Washington, *Respondent, vs. Peter Feilen, Appellant.*

Appeal from a judgment of the superior court for King county, Main, J., entered September 30, 1911, upon a trial and conviction of rape. Affirmed.

Crow, J.—The defendant was convicted of the crime of statutory rape committed upon the person of a female child under the age of ten years and was sentenced to imprisonment for life in the state penitentiary. The final judgment and sentence from which he has appealed further ordered, adjudged, and decreed that: "An operation to be performed upon said Peter Feilen for the prevention of procreation, and the warden of the penitentiary of the state of Washington is hereby directed to have this order carried into effect at the said penitentiary by some qualified and capable surgeon by the operation known as vasectomy; said operation to be carefully and scientifically performed."

By his first assignment, appellant contends that the trial judge erred in submitting the case to the jury, for the reasons (1) that no degree of penetration was shown, and (2) that the testimony of his victim, the prosecuting witness, was not corroborated by such other evidence as tended to convict him of the crime charged. We find no merit in these contentions. The evidence will not be discussed or stated in this opinion, as no good purpose could be thereby served. We are convinced that, under the rule announced in *State v. Kincaid*, 27 Wash. Dec. 114, 124 Pac. 684, the evidence was sufficient to comply with the requirements of *Rem. & Bal. Code*, Section 2437. We are also satisfied that the evidence afforded that degree and character of corroboration required by Section 2155, *Rem. & Bal.*, and from all of the evidence we conclude that the only verdict that should have been returned was the one that the jury did return. The case was for the jury, and their verdict will not be disturbed.

Appellant was prosecuted under *Rem. & Bal. Code*, Section 2436, and the penalty of life imprisonment was properly imposed. *Rem. & Bal. Code*, Section 2287, provides that:

"Whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation."

It was under the authority of this section that the trial judge ordered the operation of vasectomy, and appellant, by his remaining assignments, contends

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that it is unconstitutional in that an operation for the prevention of procreation is a cruel punishment prohibited by art. 1, section 14, of the state constitution, which directs that "excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted." As the statute does not prescribe any particular operation for the prevention of procreation, the trial judge ordered that the operation known as vasectomy be carefully and skillfully performed. The question then presented for our consideration is whether the operation of vasectomy, carefully and skillfully performed, must be judicially declared a cruel punishment forbidden by the constitution. No showing has been made to the effect that it will in fact subject appellant to any marked degree of physical torture, suffering, or pain. That question was doubtless considered and passed upon by the legislature when it enacted the statute. Appellant further contends that the imposition of the alleged cruel punishment as a part of the sentence necessitates a reversal of the judgment. This would not be true, even though we were to hold the operation to be an infliction of cruel punishment, as the judgment of conviction would have to be affirmed with directions to enforce the penalty of life imprisonment. When a sentence is legal in one part and illegal in another, it is not open to controversy that the illegal, if separable, may be disregarded and the legal enforced. *United States v. Pridgeon*, 153, U. S. 48; *State v. Williams*, 77, Mo. 310, 313.

The crime of which appellant has been convicted is brutal, heinous and revolting, and one for which, if the legislature so determined, the death penalty might be inflicted without infringement of any constitutional inhibition. It is a crime for which, in some jurisdictions, the death penalty has been imposed. 33 Cyc. 1518. If for such a crime death would not be held a cruel punishment, then certainly any penalty less than death, devoid of physical torture, might also be inflicted. In the matter of penalties for criminal offenses the rule is that the discretion of the legislature will not be disturbed by the courts except in extreme cases.

"It would be an interference with matters left by the constitution to the legislative department of the government, for us to undertake to weigh the propriety of this or that penalty fixed by the legislature for specific offenses. So long as they do not provide cruel and unusual punishments such as disgraced the civilization of former ages, and make one shudder with horror to read of them, as drawing, quartering, burning, etc., the constitution does not put any limit upon legislative discretion." *Whitten v. State*, 47 Ga. 297.

On the theory that modern scientific investigation shows that idiocy, insanity, imbecility, and criminality are congenital and hereditary, the legislatures of California, Connecticut, Indiana, Iowa, New Jersey, and perhaps other states, in the exercise of the police power, have enacted laws providing for the sterilization of idiots, insane, imbeciles, and habitual criminals. In the enforcement of these statutes vasectomy seems to be a common operation. Dr. Clark Bell, in an article on hereditary criminality and the asexualization of criminals, found at page 134, vol. 27, *Medico-Legal Journal*, quotes with approval the following language from an article contributed to *Pearson's Magazine* for November, 1909, by Warren W. Foster, senior judge of the court of general sessions of the peace of the county of New York:

"Vasectomy is known to the medical profession as 'an office operation' painlessly performed in a few minutes, under an anæsthetic (cocaine) through a skin

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cut half an inch long, and entailing no wound infection, and no confinement to bed. 'It is less serious than the extraction of a tooth,' to quote from Dr. William D. Belfield, of Chicago, one of the pioneers in the movement for the sterilization of criminals by vasectomy, an opinion that finds ample corroboration among practitioners. * * * There appears to be a wonderful unanimity in favor of the prevention of their future propagation. The *Journal of the American Medical Association* recommends it, as does the Chicago Physicians' Club, the Southern District Medical Society, and the Chicago Society of Social Hygiene. The *Chicago Evening Post*, speaking of the Indiana law, says that it is one of the most important reforms before the people, that 'rarely has a big thing come with so little fanfare of the trumpets.' The *Chicago Tribune* says that 'the sterilization of defectives and habitual criminals is a measure of social economy.' The sterilization of convicts by vasectomy was actually performed for the first time in this country, so far as is known, in October, 1899, by Dr. H. C. Sharp, of Indianapolis, then physician to the Indiana State Reformatory at Jeffersonville, though the value of the operation for healing purposes had long been known. He continued to perform this operation with the consent of the convict (not by legislative authority) for some years. Influential physicians heard of his work and were so favorably impressed with it that they endorsed the movement which resulted in the passage of the law now upon the Indiana statute books. Dr. Sharp has this to say of this method of relief to society: 'Vasectomy consists of ligating and resecting a small portion of the *vas deferens*. The operation is indeed very simple and easy to perform; I do it without administering an anæsthetic, either general or local. It requires about three minutes' time to perform the operation and the subject returns to his work immediately, suffers no inconvenience, and is in no way impaired for his pursuit of life, liberty and happiness, but is effectively sterilized.'

Must the operation of vasectomy thus approved by eminent scientific and legal writers, be necessarily held a cruel punishment under our constitutional restriction when applied to one guilty of the crime of which appellant has been convicted? Cruel punishments, in contemplation of such constitutional restriction, have been repeatedly discussed and defined, although we have not been cited to, nor have we been able to find, any case in which the operation of vasectomy has been discussed. In *State v. Woodward*, 68 W. Va. 66, 69 S. E. 385, a recent and well-considered case which may be consulted with much profit, Brannon, Justice, said:

"The legislature is clothed with power well nigh unlimited to define crimes and fix their punishments. So its enactments do not deprive of life, liberty or property without due process of law and the judgment of a man's peers its will is absolute. It can take life, it can take liberty, it can take property, for crime. 'The legislatures of the different states have the inherent power to prohibit and punish any act as a crime provided they do not violate the restrictions of the state and federal constitutions; and the courts cannot look further into the propriety of a penal statute than to ascertain whether the legislature had the power to enact it.' 12 Cyc. 136. 'The power of the legislature to impose fines and penalties for a violation of its statutory requirements is coeval with government.' *Mo. P. R. R. Co. v. Humes*, 115 U. S. 512. The legislature is ordinarily the judge of the expediency of creating new crimes, and of prescribing penalties, whether light or severe. *Commonwealth v. Murphy*, 165 Mass. 66, *Southern Ex-*

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press Co. v. Commonwealth, 92 Va. 66. For such a fundamental proposition I need cite no further authority. * * * What is meant by the provision against cruel and unusual punishment? It is hard to say definitely. Here is something prohibited, and in order to say what this is we must revert to the past to ascertain what is the evil to be remedied. Within the pale of due process the legislature has power to define crimes and fix punishments, great though they may be, limited only by the provision that they shall not be cruel or unusual or disproportionate to the character of the offense. Going back to ascertain what was intended by this constitutional provision the history of the law tells us of the terrible punishment visited by the ancient law upon convict criminals. In our days of advanced christianity and civilization this review is most interesting yet shocking and heart-rending."

The learned jurist then proceeds with the narration of the cruel punishments mentioned in 4 *Blackstone*, at pages 92, 327 and 377, and after citing and discussing the English Bill of Rights; *Whitten v. State*, 47 Ga. 301; *Aldridge Case*, 2 Va. Cases, 447; *Wyatt's Case*, 6 Rand 694; *In re Kemmler*, 136 U. S. 436, 446; *Wilkerson v. Utah*, 99 U. S. 130, 135; Cooley, Const. Lim. (4th ed.), 408; Wharton, Crim. Law (7th ed.), Section 3405; *Hobbs v. State*, 133 Ind. 404, 32 N. E. 1019, 18 L. R. A. 774; *State v. Williams*, 77 Mo. 310; *Weems v. United States*, 217 U. S. 349; *O'Neil v. Vermont*, 144 U. S. 323; and other cases says:

"In short the text writers and cases say that the clause is aimed at those ancient punishments, those horrible, inhuman, barbarous inflictions."

In *In re O'Shea*, 11 Cal. App. 568, 105 Pac. 777, the California court of appeals for the first district said:

"Cruel and unusual punishments are punishments of a barbarous character and unknown to the common law. The word, when it first found place in the Bill of Rights, meant not a fine or imprisonment, or both, but such punishment as that inflicted by the whipping post, the pillory, burning at the stake, breaking on the wheel, and the like; or quartering the culprit, cutting off his nose, ears or limbs, or strangling him to death. It was such severe, cruel and unusual punishments as disgraced the civilization of former ages and made one shudder with horror to read of them. Cooley on Constitutional Limitations (7th ed.), p. 471, *et seq.*; *State v. McCauley*, 15 Cal. 429; *Whitten v. State*, 133 Ind. 404, 32 N. E. 1019; *State v. Williams*, 77 Mo. 310. 'The legislature is ordinarily the judge of the expediency of creating new crimes, and prescribing the punishment, whether light or severe.' *Commonwealth v. Murphy*, 165 Mass. 66, 42 N. E. 504, 52 Am. St. Rep. 496, 30 L. R. A. 734; *Southern Express Co. v. Com.*, 92 Va. 59, 22 S. E. 809, 41 L. R. A., 436."

Guided by the rule that, in the matter of penalties for criminal offenses, the courts will not disturb the discretion of the legislature save in extreme cases, we cannot hold that vasectomy is such a cruel punishment as cannot be inflicted upon appellant for the horrible and brutal crime of which he has been convicted.

The judgment is affirmed. Parker, Chadwick, and Gose, JJ., concur.

FROM STEVENSON SMITH, Seattle.

Criminal Attempts.—In a pamphlet with the above title W. H. Hitchler called attention to the difficulties encountered in formulating a proper definition of an attempt. Mr. Hitchler finds no satisfactory definition of an attempt in the books. In its essential elements an attempt consists of a criminal intent and a criminal act. The criminal act is composed of a physical and a mental element.

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The mental element may be called the specific intent, that which denotes the purpose towards the accomplishment of which the act is directed and which is an essential element of the criminal act, as distinguished from the criminal intent, that is the intention to produce a result which, if accomplished, would constitute a crime, which is concurrent with but not contained in the criminal act. An attempt is to be distinguished from a solicitation and from a conspiracy. If a person be solicited by another to commit a crime and the person solicited refuses, the solicitor is guilty of a solicitation; if he consents, both persons are guilty of a conspiracy; in neither case is either party guilty of an attempt. In order to constitute an attempt there must be an act sufficiently proximate to the intended result. Not every act committed in furtherance of a design to commit a crime is an attempt. Thus if A, intending to poison B, should procure poison with which to do it a year before the contemplated poisoning he would not be guilty of an attempt to kill. One of the chief difficulties in the law of attempts is in determining the relation which the act done must sustain to the intended offense. Usually the word "proximate" has been used in defining this relation. Thus it has been said that the act done "must be proximate and not remote," and that it "must proximately lead to the commission of the crime." Mr. Hitchler illustrates the nicety of the distinctions involved by the following series of Pennsylvania cases on attempts to commit burglary: "X, intending to commit burglary, procures a complete set of burglar implements; he is not guilty of an attempt. He meets a confederate at a distance from the house; he is not guilty. He arrives in front of the house and watches it; he is not guilty. He prepares some of his implements; he is not guilty. He breaks the gate of the yard; he is guilty. He enters the yard without breaking the gate; he is not guilty. He hides in the barn; he is not guilty. He assaults the owner in the yard; he is guilty. He goes upon the steps; he is guilty. He inserts key in lock or places a ladder against the window; he is guilty. He removes moulding or breaks transom; he is guilty." The numerous cases cited and examined show the efforts of the courts to attain precision with respect to an inherently difficult subject matter.

E. L.

COURTS—LAWS.

Law Governing Domestic Relations in Indiana.—*Acts of 1907, page 160, Chapter 105. (Indiana). Approved March 5, 1907.* AN ACT to provide for the punishment of the parents of children who abandon them or neglect or refuse to provide proper home, care, food and clothing for them, and to provide for the application of the wages, income or earnings of such persons abandoning such child or children, and giving the court authority to order and direct the payment of the same for the support of such child or children, providing for the expense of extradition of and the production of the accused, and declaring an emergency.

CHILD DESERTION—FAILURE TO SUPPORT—PENALTY.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That the father, or when charged by law with the maintenance thereof, the mother of a child or children under fourteen years of age living in this state, who being able either by reason of having means or by personal services, labor or earnings shall willfully neglect or refuse to provide such child or children with necessary and proper home, care, food and clothing, shall be deemed guilty

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of a felony, and upon conviction be punished by imprisonment in the state prison or reformatory for not more than seven years nor less than one year, or in a county jail or in a workhouse at hard labor for not more than one year nor less than three months: *Provided, however,* If upon conviction and before sentence he shall appear before the court in which said conviction shall have taken place and enter into bond to the State of Indiana in such penal sum as the court shall fix, with surety to the approval of the court, conditioned that he or she shall furnish said child or children, with necessary and proper home, care, food and clothing, then said court may suspend such sentence therein, or if the court deems advisable he may suspend such sentence without requiring such bond; *Provided, Further,* That upon a failure of such parent to comply with said (order or) undertaking he or she may be arrested by the sheriff or other officer on a warrant issued on the sworn complaint of a responsible person, or the precept of the prosecuting attorney, and brought before the court for sentence, whereupon the court may pass sentence, or for good cause shown may take a new undertaking and further suspend sentence as may be just and proper.

WAGES OR INCOME—SUPPORT—ORDER OF COURT.

Sec. 2. It shall be lawful for the circuit court, or the criminal court in counties where one exists, in case of conviction of any person for the offense described in section one of this act, to make an order that such offender shall pay to the person named by said court such portion of his or her wages, income or earnings as shall be proper and just for the care and support and maintenance of his or her child or children, and to enforce the payment of such sums the said court may notify the employer or other persons from whom such offender receives his wages, earnings or income of the proposed action of the court, and upon such order being entered after such notice such employer or other person from whom said offender receives wages, earnings or income, shall pay the same, or such part thereof as the court shall order to such person designated by the court to be used for the care and support of said child or children, and so long as the order of the court is complied with the said court may suspend sentence against said offender, such employer or other person from whom such offender receives wages, earnings or income upon payment to the person designated by said court shall be released from any and all liabilities to any other person to the extent of such payment. In case it shall be made to appear to said court that such offender has prevented or is preventing the carrying out of such order, then a warrant shall issue for his arrest in manner and form as

COST OF PROSECUTIONS.

provided in section one of this act.

Sec. 3. All costs incurred by the sheriff or other officers in bringing such parent or parents in the county where the said offense shall have been committed, and all costs incident to the extradition of such parent or parents shall be paid by the county in which such offense shall have been committed; and the county council shall make such appropriations as may be necessary to carry into effect the provisions and purposes of this act.

"It appears that this statute fills the two purposes for which it is intended very satisfactorily, first, to provide a penalty and second, to provide a means whereby the child or children may have a means of support—a means that can be enforced. It has been construed that these cases may be tried in a juvenile

INSTRUCTIONS TO JURY IN MONTANA

court, that desertion is not a part of the crime as defined by this law. It also provides a means of securing the arrest of an offender and bringing him in the court, and the venue is in any county where the child is, and is not receiving the proper support.

"I have had several indictments under this law and have found it very practical and satisfactory in every way." Extract from correspondence.—Eds.

WM. J. WOOD, Lebanon, Ind., Pros. Atty. 20th Judicial Circuit.

Instructions to the Jury in Montana.—Below is the text of a letter dated November 19, 1912, from Judge George B. Winston of Anaconda, Montana. It was suggested by a reading of the recent report of Committee E of the Institute. Thereafter is a copy of the law of Montana relating to criminal procedure.—[Eds.]

"I just read with interest the report of Committee 'E' of the Institute in the matter of criminal procedure, reported on page 566, Vol. III, number 4, of the Journal of the American Institute of Criminal Law and Criminology for November, 1912, and especially recommendation two and the discussion concerning it. Recommendation two is as follows: 'That such legislation be had as will give to trial judges the right to charge jurors orally and to limit exceptions to such charge to the specific objections made by counsel at the time of the charge in the presence of the jury and before it has retired from the bar.' I think that this recommendation is open to a number of very serious objections, and that many of the objections urged by Mr. William E. Higgins to the recommendation are entitled to great weight. But the chief things to be objected to in this recommendation, it seems to me, are that jurors should be charged orally, and that the exceptions to such charge and the specific objections thereto should be made in the presence of the jury. In view of the fact that the legislature of Montana in 1907 passed two acts relating to this very subject, one regulating the practice in civil cases and one in criminal cases, and both being alike, I am taking the liberty of writing you and of sending you a copy of the act regulating the method of procedure in the trial of criminal actions. It appears to me that the method prescribed by our code is so much better in every way than the one recommended by the committee mentioned that I am going to ask that you give it publication in your Journal. This law has been in force in Montana since March, 1907, and has worked most satisfactorily. It has had the effect of minimizing the reversal of cases on grounds of error in the refusal to give and in the giving of instructions, in both civil and criminal actions. It works no hardship upon either party to the trial and, in my opinion, is one of the most salutary provisions of both our civil and criminal practice acts. Instructions are settled out of the presence and hearing of the jury and, therefore, the jury cannot be influenced or prejudiced by any argument or theory of counsel concerning the matter of the giving or the refusal to give instructions. When the jury are called in after the instructions have been settled they have no intimation whatsoever as to what instructions are given at the request of counsel or what are given of the court's own motion. Neither do they receive any intimation as to what was the contention or theory advanced by counsel during the settlement of the instructions. In actual practice this is how this procedure works: when the evidence is in, the court asks counsel if they have any instructions to offer and, if so, to hand them to the court. On receipt of the requested instructions the court passes those requested by the plaintiff to counsel for the

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defendant, if copies have not already been given to him; and those requested by the defendant are handed to counsel for the plaintiff. Abundant opportunity is allowed each side to study these instructions, as well as those which the court proposes of its own motion. Then the court invites an informal argument from counsel as to the propriety of giving or refusing to give these instructions. The judge after the argument indicates to counsel what instructions he proposes to give and what he proposes to refuse to give and then counsel state their objections, if they have any, and after the ruling on these objections the parties take their exceptions. All this, as you will note from the act, is made a record of by the court reporter. Often several hours are consumed in the settlement of instructions both in criminal and civil cases, the time depending largely on the importance of the case and on the law points involved. It seems to me that the practice is as fair to a defendant in a criminal case as he has any right to expect. And it is certainly only just that the trial judge should have the right to know, before he gives or refuses to give an instruction, just what complaint the defendant has to make in relation thereto. Counsel in the case usually has weeks, if not months, before the trial to become acquainted with the facts and the law in the case, and should be in a better position than the judge to point out error, if any, in the instructions submitted. To my mind, it is a confession of great weakness on the part of any attorney to argue that he has not sufficient opportunity to formulate objections to the charge within the time allowed for the settlement thereof. If he, who should be familiar with the facts and law of the case, cannot protect his client's interest in this regard, then he has no business in the practice of the law. The real objection on the part of those lawyers who seek to prevent such legislation is that they want to be in a position where they can put the court in error. I think the law we are now working under in this regard is as nearly ideal as it could be made. Notwithstanding this, some lawyers in this state attempted to have it amended at the last session of the legislature, in a manner that would have emasculated the act completely. I am glad to say that they failed in this effort."

GEO. B. WINSTON, Judge Third Judicial District, Anaconda, Montana.

LAWS OF MONTANA. TENTH SESSION, 1907. P. 197.

CHAPTER 82.

An Act to Amend Section 2070 of the Penal Code of Montana, and to Repeal an Act Approved February 15th, 1902, Relating to the Method of Procedure in the Trial of Criminal Actions.

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1. That Section No. 2070 of the penal code of the State of Montana be and the same is hereby amended, so as to read as follows:

1. The county attorney must state the case and offer evidence in support of the prosecution.

2. The defendant, or his counsel, may then state his defense and offer evidence in support thereof.

3. The parties may respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

4. When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing and

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numbered by the party, or his attorney, and together with a written request asking the same, and signed by the party, or his attorney, delivered to the court. At all times prior to charging the jury the instructions to be given shall be, without the presence of the jury, settled by the court, at which settlement counsel for the parties shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court, and to present and argue to the court objections and exceptions to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of the instructions the respective counsel, or the parties, shall specify and state the particular ground on which the instruction is objected or excepted to, and it shall not be sufficient in stating the ground of such objection or exception to state generally that the instruction does not state the law, or is against law, but such ground of objection or exception shall specify particularly wherein the instruction is insufficient, or does not state the law, or what particular clause therein is objected to.

The court shall pass upon the objection to the instructions requested and also those proposed to be given by the court, and shall either give each instruction as requested or positively refuse to do so, or give the instruction requested with a modification, and shall mark or endorse upon each instruction offered and requested by the parties in such manner that it shall distinctly appear what instructions were given in whole or in part, and in like manner those refused or modified, and if modified, wherein the modification consisted. The court shall also give the instructions as originally proposed to be given by the court, or as modified, and all the instructions given by the court, together with those refused, must be filed as a part of the record of the cause.

The court stenographer shall be present at such settlement and shall take down all the objections and exceptions of the respective counsel to all or any of the instructions given or refused by the court together with the modifications made therein, and the ruling of the court thereon, and at the close of the trial such objections and exceptions taken during the settlement, together with the rulings of the court thereon, must be written out at length or printed in type by the stenographer and filed with the clerk forthwith, and thereafter such exceptions may be settled in a bill of exceptions as provided in section 2171 of the penal code of Montana, or an act of the eighth legislative assembly of the State of Montana Entitled "An Act to Provide for the Settlement of Bills of Exception taken before or after trial in Criminal Cases and to Provide for the Review by the Supreme Court on Appeal of Proceedings, Evidence and Matters contained in such Bill of Exceptions," approved February 25th, 1903.

No motion for new trial on the ground of errors in the instructions given shall be granted by the district court unless the error so assigned was specifically pointed out and excepted to at the settlement of the instructions as herein provided; and no cause shall be reversed by the Supreme Court for any error in the instructions which was not specifically pointed out and excepted to at the settlement of the instructions herein specified, and such error and exception incorporated in and settled in the bill of exceptions as herein provided.

5. When the instructions have been passed upon and settled by the court, and before the arguments of counsel to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as are

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passed upon and settled at such settlement. In charging the jury, the court shall give to them all matters of law which it thinks necessary for its information in rendering a verdict.

6. When the jury has been charged, unless the case is submitted to the jury, on either side, or on both sides, without argument, the plaintiff must commence and may conclude the argument. If several defendants, having several defenses, appear by different counsel, the court must determine their relative order in the evidence and argument. Counsel, in arguing the case to the jury, may argue and comment upon the law of the case, as given in the instructions of the court, as well as upon the evidence of the case.

Section 2. That an act approved February 15th, 1901, entitled, "An Act to Amend Section 2070 of the Penal Code of Montana, relating to the method of Procedure in the trials of Criminal Actions," and all acts and parts of acts in conflict herewith be and the same are hereby repealed.

Section 3. This Act shall take effect and be in force from and after its passage and approval by the Governor.

Approved March 4th, 1907.

For Relief to Persons Erroneously Convicted.—The following is the bill referred to in Dean Wigmore's editorial in the present issue. Together with the editorial and Mr. Borchard's article in this number of the JOURNAL it has been reprinted in Senate Document 974, 62d Congress, 3rd Session, and may be obtained from Senator Sutherland or any other member of Congress. The bill was introduced in the House on December 5 by Mr. Evans and in the Senate on December 10 by Senator Sutherland. H. R., 26748; S. 7675.

To grant relief to persons erroneously convicted in courts of the United States.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

§ 1. That any person who having been convicted for any crime or offense against the United States, shall hereafter, on appeal from the judgment of conviction or on the retrial or rehearing of his case, be found to have been innocent of the crime with which he was charged and not guilty of any other offense against the United States, or who, after inquiry by the Executive has received a pardon on the ground of innocence, may, under the conditions hereinafter mentioned, apply by petition for indemnification for the pecuniary injury he has sustained through his erroneous conviction and imprisonment.

The bill is limited to convictions in the federal courts—that is, crimes or offenses against the United States. It is limited to those only who have been *convicted and imprisoned* under a judgment of conviction, and whose innocence is subsequently established. The right to the relief is discretionary only. It is called here indemnification, although some other word may be substituted. The relief is limited to the *pecuniary* injury, thus excluding all compensation for *moral* injury, which, in case of conviction for crime, is generally the more serious element of injury. This limitation follows, in general, the European statutes and has as its object the restriction to its narrowest limits (while acknowledging the principle) of a demand on the State Treasury. When the innocence is established after the wrongful conviction *plus* imprisonment, the indemnity should cover the injury during the whole period of detention, both before and after trial. The expression "of the crime which he was charged *or of any other offense against the United States*" has been used to cover cases where the indictment may fail on the original count, but claimant may yet be guilty of another or a minor offense. Therefore, if the accused has committed *any* offense

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against the United States, his right to relief is barred. Some may raise the objection that the right to petition the United States is granted in the bill, even though the accused may have a private right of action against an individual for false imprisonment or malicious prosecution. I do not consider it desirable to insert this limitation in the bill, though if there is a general feeling that the accused must exhaust all his other remedies, either as a bar to this relief or as a condition precedent to demanding it, words to this effect will have to be inserted. My own feeling is that the court of claims should take into consideration, under section 9, all matters connected with the case, including the other remedies of the accused, whether he has a possible right of action against third persons, how much that right may have been worth, the possibility of securing and executing judgment, and particularly the extent of the State's participation in the wrong inflicted on the individual.

§ 2. That the claimant may, within six months after he has been finally acquitted or pardoned on the ground of innocence, petition the Court of Claims for the relief granted in this act.

A very short statute of limitations is fixed, following the European statutes in this respect. The claim is to be brought before the court of claims, which has been granted jurisdiction over similar awards made by the United States to individual claimants. (See, for example, the French Spoilations Act, 23 Stat. at L. 283).

§ 3. That the court is hereby authorized to make all needful rules and regulations consistent with the laws of the land for executing the provisions hereof.

This follows in general the provisions of section 2 of the French Spoilations Act, 23 Stat. at L. 283.

§ 4. That the claimant shall have the burden of proving his innocence, in that he must show that the act with which he was charged was not committed at all, or, if committed, was not committed by the accused.

The cases in which the relief can be claimed are limited here to those only in which the claimant shall affirmatively prove his innocence. Hence, only a most flagrant case of injustice could be brought within the terms of this section. In providing that the claimant must show that the crime was not committed at all, or if committed, was not committed by the accused, I am following in general the provisions of the law of Sweden and Hungary. It is likewise intended to limit the relief to cases in which the justice of an award is obvious.

§ 5. That the claimant must show that he has not, by his acts or failure to act, either intentionally or by wilful misconduct or negligence, contributed to bring about his arrest or conviction.

This carries out simply the equitable maxim that no one shall profit by his own wrong or come into court with unclean hands. It follows the provisions generally found in the European statutes, although these provide, for example, in the German act, that gross negligence must exist to bar the right. In the United States we are opposed to fixing degrees of negligence. (See 18 Harvard Law Review, 536-37).

§ 6. That the court of claims shall examine the validity and amount of all claims included within the description of this act; they shall receive all suitable testimony on oath or affirmation and all other proper evidence; and they shall report all such conclusions of fact and law as in their judgment may affect the right to relief.

In its general provisions this section follows section 3 of the French *Spoilations Act*, 23 Stat. at L. 283. Under it the court of claims would, of course, receive the record from the trial court, the appellate court, and the second trial court, in order to determine the justice of relief in the case. They may also call for oral or written testimony whenever desired. This section gives the court full power and opportunity to arrive at the facts.

§ 7. That upon proof satisfactory to the court of claims that the claimant is unable to advance the costs of court and of process, the cost of obtaining and

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printing the record of the original proceedings and of securing the attendance of such witnesses as the chief justice or the presiding judge of the court of claims shall certify to be necessary, and the service of all notices required by this Act, shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the secretary of the treasury of a duly authenticated order, certified by the clerk of the court of claims and signed by the chief justice or, in his absence, by the presiding judge of said court.

The claimant will, in most cases, be a poor person and it is desirable that the expense of bringing up the record should not fall as a burden on him. This expense might, in fact, prevent the poor claimant from bringing suit at all. It should, therefore, be provided that in such cases where the Chief Justice, or the presiding judge of the court of claims, considers that the claimant has made out a *prima facie* case of erroneous conviction and his own innocence that the expense of bringing up the record shall be borne by the treasury. Where the claimant does not make out a *prima facie* case coming within the provisions of this Act, the chief justice of the court of claims would not make the certification necessary to have the treasury bear the expense.

§ 8. That the court shall cause notice of all petitions presented under this act to be served on the Attorney General of the United States, who shall be authorized, by himself or his assistant, to examine witnesses, to cause testimony to be taken under this Act, and to be heard by the court. He shall resist all claims presented under this Act by all proper legal defenses.

The purpose of this section is self-explanatory. In terminology it follows the provisions of section 4 of the French Spoliations Act, 23 Stat. at L. 284.

§ 9. That the court of claims in granting or refusing the relief demanded shall take into consideration all the circumstances of the case which may warrant or defeat or in any other way affect the right to and the amount of the relief herein provided for, but in no case shall the relief granted exceed five thousand dollars.

The granting of the relief is *discretionary*, as was stated in the beginning. Most of the European statutes generally present a list of conditions which shall bar or limit the right to the relief, but I consider it best to follow the French law which makes no mention of limiting conditions, but leaves the judge to determine from all the circumstances of the case whether any and how much relief is proper. The relief is limited to five thousand dollars. This provision is to limit any exorbitant claims which may be brought.

The court of claims is given jurisdiction over the matter in preference to the trial court, or the appellate court, or the second trial court (which presumably could judge better of the merits and circumstances of the case) in order to maintain the traditions of American judicial procedure. If the jury or trial court were given the right to pronounce on the propriety of an award in a case of acquittal (as is the case in some of the European countries) it would bring into our law a new kind of acquittal, in which the jury or judge could acquit *with degrees of approval or sympathy*. The distinction would be an odious one to make. While it would be desirable to have the benefit of the special knowledge of the case secured by the trial court, or the jury, still it is better to forego this advantage for the sake of conformity with legal custom and leave the establishment of the damage to a new court conforming in its jurisdiction in this case to its jurisdiction in similar cases of claims against the United States.

In all respects (a) as to the person indemnified; (b) as to what he must show; (c) as to the amount of the indemnity; and (d) as to the discretionary character of the relief, the indemnity has been limited to the most flagrant cases of unjust conviction and deserving relief.

§10. That in all cases of final judgments by the court of claims the sum due thereby shall be paid out of any general appropriation made by law for the pay-

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ment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the court of claims, and signed by the Chief Justice, or, in his absence, by the presiding judge of said court.

EDWIN M. BORCHARD, LAW LIBRARIAN OF CONGRESS.

PENOLOGY.

The Illinois State Prison Commission and Its Plans.—The Illinois State Prison Commission was created three years ago by appointment of Governor Deneen. To one of the members of this commission, Mr. James A. Patten of Evanston, we are indebted for the facts contained in this note. As a member of the commission and in many other ways he has in the past and is yet devoting his time, energy, means, and rare good judgment to the public welfare. It was largely through his personal effort that the commissioners have been able to prepare the way for what will one day be, from every view-point, the most notable prison in the civilized world. All this preparation, be it said to the credit of the commissioners, has been accomplished in the face of obstacles of a political nature which only intelligent men of affairs can circumvent.

For many years various industrial establishments have been encroaching upon the walls of the state penitentiary at Joliet. Several unfavorable consequences from the point of view of the penitentiary interests have followed upon this condition. The atmosphere has been vitiated by smoke and with foulness due to other sources. On this account alone the location has become highly undesirable as a place for the state prison. Sanitary conditions cannot be maintained and consequently, we believe, the effectiveness of the institution as a place of penal confinement is to some extent minimized. Surrounded as the prison is with property that has been acquired for industrial uses, the site itself has become immensely valuable from the commercial point of view. This fact bears upon the problem of economic administration. It is impossible as long as the prison is in its present situation to work out any scheme of outdoor farm labor which experience elsewhere has proven to be a most salutary form of labor from the points of view of practical education, reform, and health.

Finally, located as it is, the difficulty of expansion has become a matter of serious consideration. Whatever may be the dreams of criminologists, and social reformers in general, we are not yet at the stage at which we can sanely neglect the practicability of prison expansion in choosing our sites and in erecting our buildings.

These are the considerations that led the Governor to appoint a special commission with instructions to choose a site, purchase a tract of land, and develop plans for buildings. It was the purpose of this commission, Mr. Patten tells us, to find land adequate to the needs of the new prison within a short distance of the city of Joliet in order that, when the time for building should arrive, convict labor might be employed if it should be found practicable. It was desired, also, to secure land on which sand, gravel, and stone could be found in considerable quantities, and furthermore land which would be suitable for tilling purposes. The commission was fortunate in securing at reasonable

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cost a tract of 2000 acres lying about two miles south of Joliet, which meets practically all of these requirements.

Mr. W. C. Zimmerman, State Architect of Illinois, under the direction of the commission, has prepared and submitted plans for the buildings and the legislature of the state at its next session will be asked to make an appropriation to cover the cost of putting the plans into execution. Mr. Zimmerman, before drawing his plans, made a special study of prison construction in America and in Europe. None of the best prisons have escaped his attention, and he has evolved plans which for their extreme simplicity, the readiness with which they lend themselves to the most exacting requirements for ventilation and convenience of administration, cannot, in our opinion, be excelled. For the cuts on the following pages we are indebted to Mr. Zimmerman and the *Chicago Tribune*.

A study of the plans shows that the prison, constructed as it is to be of circular units arranged radially about a central point, is capable of infinite expansion; that each of these units is accessible to direct ventilation, that is, each cell may have an outside window, and that all units are equally accessible to the common dining room at the center of the sixty-acre circle occupied by the units.

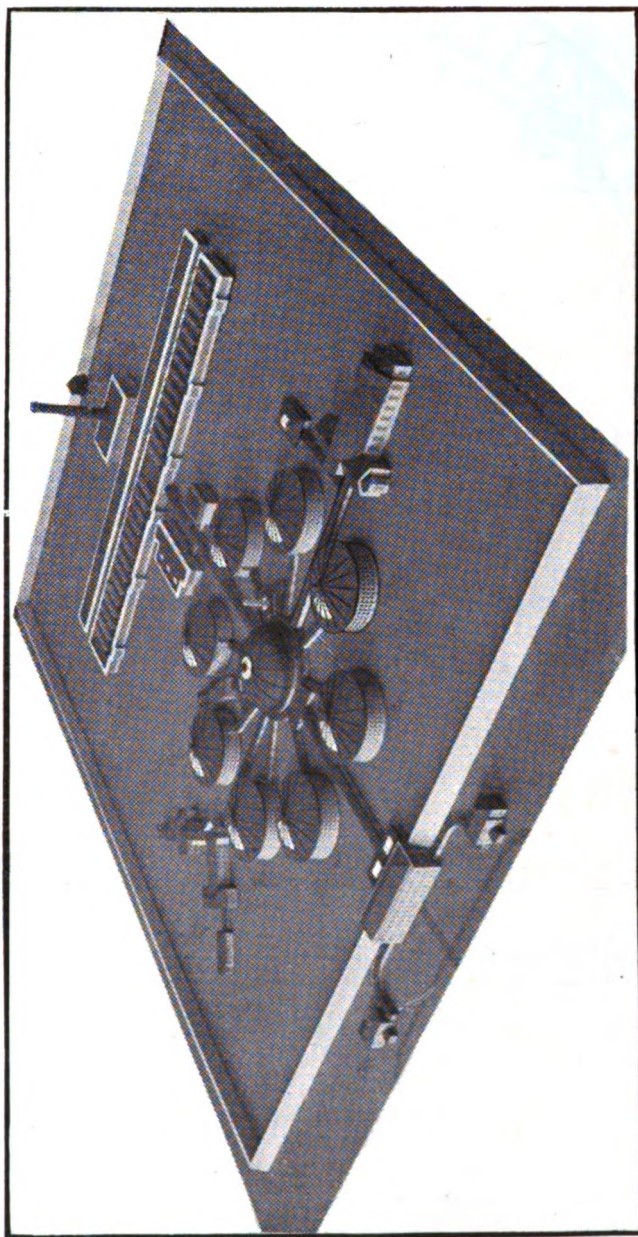
The prevailing construction of cell blocks in the United States embodies these features:

1, Walls of the building; 2, the corridor next to the walls; 3, the cell blocks which are back to back excepting for the so-called utility corridor which separates the rows of cells. The natural light for the cells must come through windows in the wall of the building.

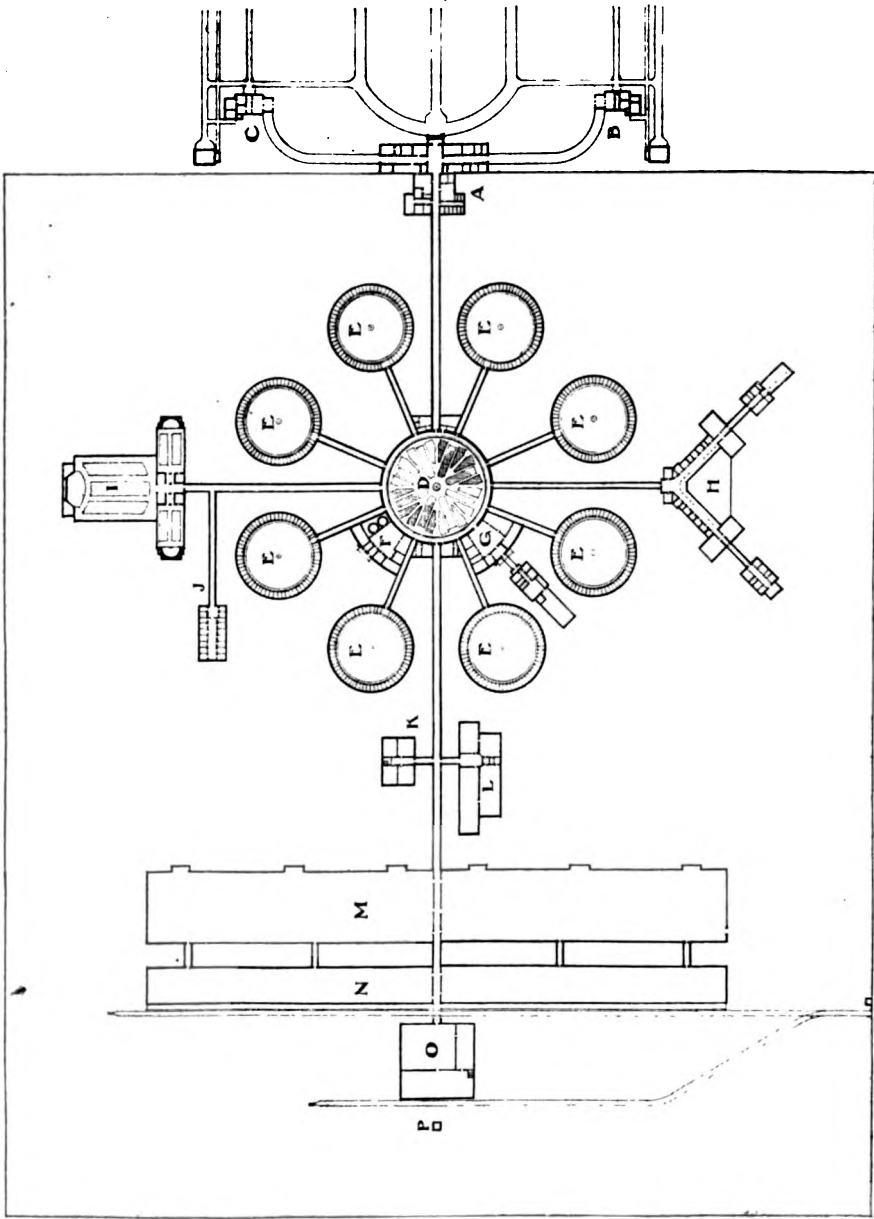
In Europe the prevailing construction is exactly the opposite of the foregoing. There the cells are built against the walls of the cell house. The corridor is in the middle of the house and each cell is a room by itself with a barred window leading to the outside air.

The inside cell construction in the United States has been held to have several advantages, for the utility corridor mentioned above is an economical feature. The inside cells are considered as safer, furthermore, for the reason that the prisoner, in order to escape, must first go through the door, which is his window, then through the wall of the cell house, before he has reached the wall of the prison grounds. They are open, however, to serious criticism because of the limited amount of direct sunlight and fresh air which may be admitted into them. Again, since the cell doors are not solid, but are barred, it is obvious that one prisoner can readily by word of mouth communicate with others through a considerable portion of the cell house. Supervision in the case either of the inside or outside construction must be carried on through the patrolling of the corridors by a guard, who must make a regular beat before the cells. This gives no little opportunity to a clever prisoner to make an avenue of escape.

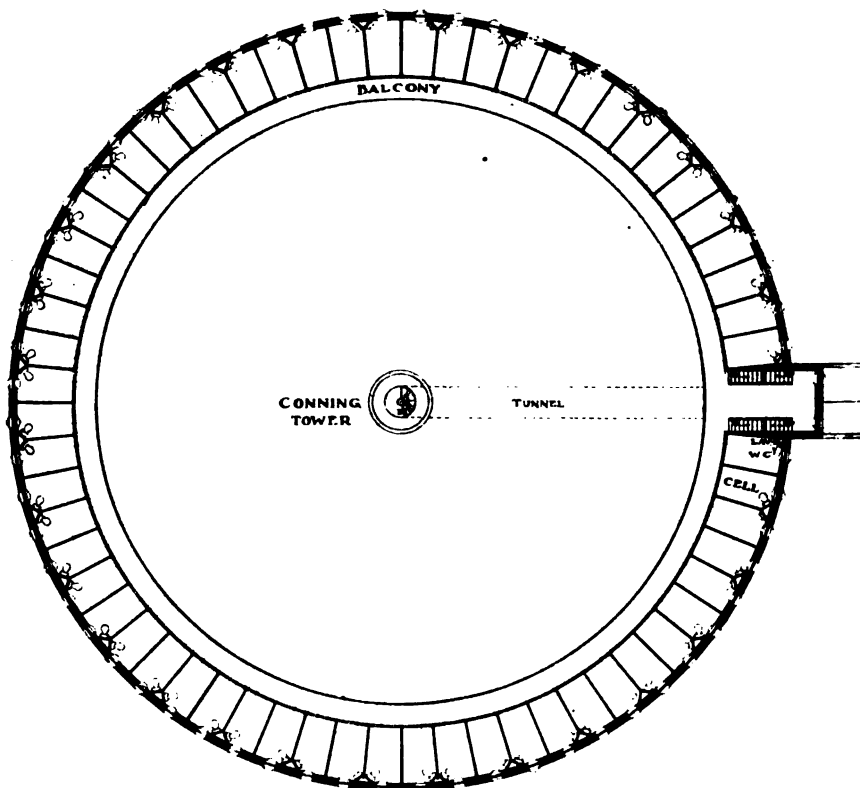
The plans devised by Mr. Zimmerman overcome these objections most completely. The cell house, as is represented in the cut, is circular. It will be about 120 feet in diameter and since the cells are against the cell house wall direct light and air are assured. Instead of having an open door of steel bars, through which prisoners may easily communicate with one another, heavy glass



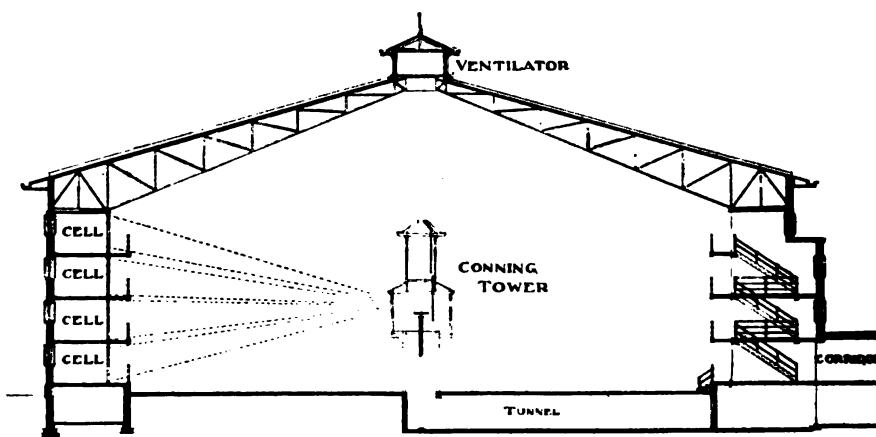
Bird's-Eye View of the Prison Plan. Courtesy of the *Chicago Tribune*.



Ground Plan of the Prison, showing Administration Buildings, A, B, C; Cell Houses, E; Dining Room, D; Shops, M, N; School, Chapel, Laundry, Hospital, Kitchen, etc.



Ground Plan of Cell House.



Vertical Section of Cell House.

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will be fitted into the open spaces among these bars, so that the cell is a completely closed room. Each one will contain its own complete lavatory, and is ventilated both by means of the outside window and a pipe running through the roof. A full view of every cell in this circular unit may be had from a steel shaft enclosing a circular stairway in the center of the cell house. This stairway reaches as high as the highest tier of cells. The shaft is bullet-proof and at intervals from the top to the bottom slits are provided so that an observer upon the central stairway within the shaft can see clearly what is going on in any one of the 200 or 250 cells in the house, provided they are arranged as in the Illinois plans, in four tiers. Entrance to this shaft may be had only through a tunnel which communicates directly with the administration building, which is outside the circle occupied by the cell houses. It is obvious, therefore, that a single armed guard from his position in this shaft, could readily control a mob, however fully armed it might be.

One objection that has been made to the plan is that through the glass doors any one prisoner from his cell is distinctly visible to practically all other convicts in the unit. Such an objection, as Mr. Zimmerman has pointed out, is easily overcome by the placing of as many movable partitions coincident with the radii of the cell house as may be desired. Two such partitions intersecting each other at right angles in the center of the house would effectually prevent one prisoner from seeing another, but at the same time the observer in his central shaft would not be prevented from distinctly seeing each prisoner in his cell.

The movable partition feature adapts itself nicely to the necessities of classification of prisoners. For that matter the general construction of the prison is adapted perfectly to this purpose. One cell house can be set apart for one class of offenders, another for another. It may be desirable to allow a certain class of convicts the privilege of seeing one another, in which case the partitions can be removed or so placed as to allow such an opportunity.

The guard in his shaft will have at his hand a complete system of levers, buttons, etc., controlled in such a way that at any time the locks of any or all of the doors in the cell house may be fastened or unfastened and the lights in any or all of the cells may be dimmed or increased at will.

A circular prison was built in 1901 in Haarlem, Holland, which accommodates about 400 prisoners. It, however, has wooden doors, for each cell, which renders the supervision of the inmate no more easy than in the type of prison which prevails in the United States. The glass doors provided for in the Illinois plans are a novel feature. The circular unit form of construction, the central stairway with its outlook, the partitions providing both for obstruction of vision and for the classification of prisoners, and the elimination also of a number of attendants who otherwise would be needed for supervision are additional novelties in the present plans.

The dining room is situated on the ground floor at the center of the circle occupied by the cell houses. Within it is a central shaft like that which occupies the center of each of the houses. It commands the approaches from the units to the dining room, and also the avenues leading outward to the laundry, and to other shops outside the circle.

Mr. Zimmerman believes that the cost of construction of a prison built upon

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his plans would be about 10 per cent less than that of the ordinary prison. This is due in part to the fact that in front of each cell in this circular arrangement there is little "dead space." That is to say, each cell occupies a part of a sector of a circle instead of a rectangular block in a large rectangular formation.

R. H. G.

The Annual Prison Congress.—A good index to the spirit of progress in the treatment of the criminal is found in the annual meetings of the American Prison Association. The writer has attended nearly every prison congress for a dozen years. During that time, not only has there been a marked change in the personnel of the delegates, but the viewpoint and character of subjects discussed are different.

Formerly, one heard much concerning the physical equipment of prisons, and methods of keeping and controlling prisoners. Now, these matters of detail are largely lost sight of in the greater and more far-reaching purpose to inaugurate an enlightened system for the correction of the offender. In many respects the recent meeting in Baltimore registers the high water mark in this respect. Subjects that were avoided ten years ago, such as the parole of life prisoners, and the prison labor problem, were openly and frankly discussed. And always the trend of the debate favored the making of men rather than money, and the highest welfare of society through saving the individual, rather than any shibboleth of punishment, much less retaliation.

The American Prison Association, as an organization, has always stood for the principle of reform rather than punishment. It has held reformation as the right means to conserve the best interests of society. Its founders were fully a generation ahead of their time. Now, it would have been difficult for the younger delegates to realize that it had taken the Association forty years to show the fallacy of revenge, and the weakness of mere punishment as a deterrent.

As a matter of fact, the general public is evidently not fully convinced of this, even yet. This was shown by a resolution, unanimously passed by the Association, re-affirming its contention for the principle of reformation. It seems that various press reports had held that recent riots in various prisons were probably due to too great leniency, and the discarding of the severest forms of punishment. The resolution asserted the belief of the congress that such disorders were due rather to inefficiency and poorly paid supervision, and the survival of barbarous methods in the midst of an awakened conscience on the righteousness of humane treatment. The congress prides itself on passing few but important resolutions. Only one other was proposed and passed, and it appealed to congress to sanction a measure which has been proposed by the attorney general, providing for the parole, after a reasonable term, of federal life prisoners. Such a law has already been enacted in a number of the states, and has proven to be, not only a boon to many worthy beneficiaries, but a blessing to the states.

The question of contract prison labor was formerly touched upon somewhat gingerly, due chiefly to the fairly equal division of opinion. The recent trend, however, has apparently been decidedly in the direction of disapproval. The movement to abolish convict contract labor in the various states has advanced in a most surprising way. State after state has joined the ranks of those which

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have adopted some form of state employment for prisoners. Those who read papers advocating the latter method seemed to have the better of the argument. Prison administrators, who had had experience with both methods, seemed to feel that the change toward state employment is inevitable and permanent. The whole spirit of the movement was significantly summarized by Dr. J. A. Leonard, Superintendent of the Mansfield Reformatory, when he said, "It is psychic, my friends: No matter how high-minded the contractor may be, (and those I have dealt with have been all that could be desired), there is nevertheless the feeling in the mind of the inmate that he is being exploited by private interests, and this feeling does not conduce to reformatoin."

The farm colony idea for the care of misdemeanants, and other outdoor work on the "honor system" came in for due attention in the discussion of the congress. It is recognized, however, that the former plan is suited chiefly to the treatment of minor offenders, and that the latter is no new thing. Many prison officials have long had men on the honor roll of trusties and seldom has this confidence been violated. The parole system has taught us that the percentage of prisoners who can be trusted is larger than we had supposed. The Mansfield Reformatory has had as high as two hundred and twenty-five men working on its farm, and the Jackson, Mich., prison had fifty or more prisoners including life men, living day and night on the state farm throughout the summer. Dr. Gilmour, warden at Toronto, has said it would be easier to pick out the men he could not trust. There is a growing feeling, nevertheless, that is not desirable to work a large number of convicts on public roads in populated districts; that such work is not practicable in all climates, and that the herding of men together in barracks is bad.

A subject of far greater promise, and more prominent in the discussions of this congress than ever before, has to do with the actual character of the inmates of correctional institutions. Wider recognition is given to the physical and mental variations found among the men behind the bars. Several discriminating studies had been made and were presented to the congress. The physician of the Massachusetts Reformatory and Dr. Peyton, Supt. of the Indiana Reformatory, in their papers, revealed the injustice of holding all violators of the law to the same degree of responsibility. These speakers, and Dr. Goddard of New Jersey in a brilliant paper, expressed their belief that at least twenty-five per cent of offenders are mental defectives. One could not escape the conclusion from these deductions that any wholesale method of dealing with criminals is illogical, useless and harmful. They pointed rather to the necessity of a closer study of the individual offender, both before and after conviction, and to the prescribing of treatment suitable for each case. Fortunately the promising movement in this direction has begun, notably by Dr. Healy in the Juvenile Court of Chicago, and by the establishing of a psychological laboratory in the reformatory at Jeffersonville, Indiana, and at Raway, New Jersey.

Thus the reformatory movement seems to find its chief basis in a better understanding of individual shortcomings and possibilities. A reference to the Elmira Reformatory method of trade training without direct profit to the state, brought the statement from Mr. Scott, Superintendent of the New York prisons, "that the method had fully justified itself in the making of good citizens, and will be continued." The whole spirit of the congress was more than ever a

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reflection from the atmosphere of those institutions which have fully adopted modern methods of treatment and training. The natural fruitage is shown in the new born hope and higher aspirations of all improvable offenders.

F. EMORY LYON,

Superintendent of Central Howard Association, Chicago.

Burrell Oates Hanged at Last.—Readers of Mr. Crowell's article in the JOURNAL for September, 1912, on the case of Burrell Oates, will be interested in the following item from Waxahachie, Texas:

"Burrell Oates, a negro, who was hanged here to-day, was convicted of having murdered Sol Aronoff, a Dallas shopkeeper, eight years ago. Oates, without money or influential friends, obtained seven trials, and his case was responsible for two changes in Texas' statutes.

"Oates' fight for life was made all the more remarkable by the fact that each of the seven trial juries found him guilty of murder, and six of them condemned him to death. The other jury, being unable to agree over the penalty, caused a mistrial, although declaring the negro's guilt.

"Technicalities and at times more serious legal errors have been used repeatedly to secure new trials for Oates. The sixth trial was declared void because the jury in writing its verdict inadvertently omitted the words "in first degree" in finding Oates guilty."

J. H. W.

POLICE—IDENTIFICATION.

Report of the President of the International Association of Chiefs of Police.—Major Sylvester, President of the International Association of Chiefs of Police, might well congratulate that organization in his annual report for its educational work alone. The dissemination of knowledge of improved methods for doing police work is of far greater importance than the occasional apprehension of some criminal for another department. It is more especially the case with police administration because of the lack of books and articles on the practical side of policing, for of fiction and generalizations there has always been an abundance. Students of municipal affairs have accumulated and published stores of knowledge on almost every phase of municipal government except that very important one, police. The Library of Congress does not contain a dozen useful works on this subject. That this lack of information is being realized at last is shown by the appointment of a Sheldon Fellow in Harvard University to devote his time to the study of police administrative methods in Europe and the United States. The International Association will for a long time be the best means of introducing new ideas.

The great growth of automobile traffic has brought several new problems into police administration. The most pressing difficulty is the complication of street traffic, but the hardest to combat is the automobile burglar and safe-breaker. The solution for this would seem to be in the extension of regular patrols into the rural districts which has long been needed for many other causes and has already been introduced to a small degree in some states as Pennsylvania. Such a patrol would almost necessarily have to be maintained by the state as it is in England, France and Germany, where its value has been fully demonstrated. The automobile, likewise, permits a small saving in the larger departments through the use of automobile patrol-wagons. Boston has recently installed one in its largest district. The operators declare that they

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feel equal to covering all calls not only in their own, but in at least another large district as well. The superior speed of the automobile, its cleanliness, and its lower cost of operation need but little demonstration. The cheaper operation comes through the small cost for idle time as compared with keeping several horses and two or more wagons. During the hot summer weather many police horses are exhausted by the extraordinary demands made upon them, whereas the automobile would work as well in hot weather as in cold.

It is devoutly to be hoped with Major Sylvester that political exigencies will soon permit the passage of a sensible law for the restriction of immigration under the provisions of which it will be possible to exclude effectively the members of such societies as the Black Hand. The plundering of their more industrious fellow immigrants by these detestable criminals goes on steadily, silently, and to a far greater extent than most persons think. Police officials are aware of their depredations, but practically helpless because of the lack of testimony which will convict in the face of our safeguards to individual liberty. The insults and robberies are borne in silence either because of personal fear or the more horrible fear of danger to wives and daughters. No legislation could more truly protect and help the desirable immigrant than that which would permit effective dealing with these anarchistic parasites.

At another time last summer Major Sylvester said that one of the best methods of keeping a police force free from "graft" is to pay it well. In his address he follows this generalization still further. The work of a policeman will make a man who has been doing it for a long time unfit to pursue his old trade even if he could find an opening. With the prospect before him of an old age dependent wholly upon his savings, it is hardly more than natural that a man with opportunity at every turn and of the ethical standards of an ordinary policeman will become first a petty, and then a large "grafter," while police efficiency becomes a mere myth. The very obvious preventive recommended is to make ample provision for the retirement and pensioning of police officers. Such a provision as half pay after twenty years' service and compulsory retirement at the age of sixty-five would be a very great inducement to stop "grafting." Many cities have adopted a similar scheme, and as Major Sylvester said, it is most gratifying that the number is steadily increasing.

GEORGE H. McCaffrey, London, Eng.

(Sheldon Fellow, Harvard University.)

SOCIAL EVIL.

President Harris on the Social Evil in Chicago.—The following was prepared as an eight-minute address and was one of a list of five addresses delivered recently before the Sunday Evening Club in Orchestra Hall, Chicago. The entire program was designed to arouse public sentiment on the subject of social vice as it prevails in Chicago. [Eds.]

"The woman seller in Chicago gathers an annual profit of \$16,000,000, some say, and I think that estimate too small. Tonight, thousands of women are merchandising their bodies. A multitude of boys are planting the seeds of the Black Plague, the worst disease of civilization. And yet all prostitution is illegal. Can any statement be more astounding? Oh, yes. It is this: The great, rich, religious city of Chicago is doing nothing about it.

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"If a community takes the position that vice cannot be cured and that nothing better is possible than to reduce its evils and to keep it out of sight, then there is much to be said for the Japanese method of complete segregation; but segregation in America is not such complete segregation. With us, it means toleration of an illegal business within vaguely defined districts which are occupied not only by vice but also for legitimate business purposes and for residence usually by a large number of the poorest and most helpless of the community. Such segregation is no remedy or even solution, but rather tends to interfere with progress towards a cure. If vice is to be tolerated, there is not much to choose between segregation and dispersion, but the disadvantage is on the side of segregation. If we hope to make real progress toward remedying the vice evils, then segregation is the worst method.

"Segregation is objectionable, because it is likely to be accepted as a remedy. A man who adopts it is like the one who saves his own loss by passing a counterfeit coin on another. It may be said that neither is dispersion a remedy, and truly; but dispersion incites that public to action while segregation favors neglect.

"Segregation is unfair to innocent and conscientious owners of property in the segregated district, for while it increases enormously the value of property used for disreputable purposes it depreciates the value of nearby property. This situation is a sore temptation to owners.

"Segregation is outrageously unfair to those poor, helpless people who must live in the immediate presence of the congregated vicious element. It is not at all a lovely thing that these helpless ones who cannot defend themselves, are left by the better element of the community to suffer the concentrated evils of vice conditions.

"Segregation by concentrating vice thrusts an unbearable burden of responsibility for the enforcement of the law upon the minimum number of city officers.

"The same concentration, while reducing the number to be tempted, enables vice to combine money and influence for the temptation and corruption of public officers.

"Segregation, by hiding vice from public view, deprives public opinion of its proper influence in restraint of vice and of its patrons, and upon the police who escape observation and through constant touch with vice come to tolerate it. It permits vice to flaunt itself, where it may be easily found by the idle and curious, with the least risk of detection; and it leads to the seduction of numberless curious boys, who are weak rather than bad.

"Segregation favors the development of vice as a business under its captains of industry.

"For these and other reasons there is not time to mention, it seems to me there is hope for improvement of the vice situation if the policy of segregation be given up. Dispersion will compel the community to face the evil and will teach it the facts. It may be said, the city will not tolerate vice in the better quarters. No, and therein hope lies. If the community is to tolerate the vice plague, then it is fair that the community in general share the disadvantages. It is mean for the strong to use their strength only to put the evil over upon the weak who can do nothing. A general distribution of the haunts

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of vice throughout the city would soon show how fallacious is the common claim that any real progress toward extermination is impossible.

"If vice is to be cured, there must be, first, publicity and education, then honest, scientific and courageous study of the problem, together with patient administrative experiments. Harsh methods and occasional persecution of unfortunate, and if you please, wicked women, will accomplish little. The community must recognize its responsibility to cure a community evil, must make laws that can be enforced, and must put an end to the open and well-known ignoring of the law, by those responsible for its enforcement.

"There are some things we can do at once. We know that one great avenue to vice is the disreputable dance hall. For those who use these halls, the community can provide decent opportunities for amusement of the kind they will use. Again, it is possible for a community which knows that many girls in the city are working for less than a living wage, to accept guardianship over them. Require every employer to register all girls employed at less than a specified minimum pay, and then let the city appoint public guardians who will in necessary cases furnish the assistance the family renders in many cases, helping them at the public expense, until they are able to care for themselves. In a country which is so generously devoted to the protection of labor, one need not apologize for asking public protection for that class of American labor most in need.

"Do you say I am preaching socialism? I don't care, if it means salvation. And I'll take this text from the words of a master: 'Bear ye one another's burdens.'"

ABRAM W. HARRIS,

President of Northwestern University; Member of the Chicago Vice Commission.

The American Vigilance Association.—The American Vigilance Association is the tangible evidence of determination on the part of several organizations in America to concentrate their energies in the fight against the white slave traffic. It is backed by practical business men of the east and west, and by some of the foremost men and women in educational and social work, who have consented to serve on its executive board, to lend their influence in the guidance of its policy, and to give their advice in the perfecting of the various departments of work. The president is David Starr Jordan; vice presidents, Cardinal Gibbons and Dean Sumner; treasurer, Charles L. Hutchinson of Chicago, and the executive secretary and general counsel, Clifford G. Roe. The executive board consists at the present time of the following members: Clifford W. Barnes, chairman; John G. Shedd, Julius Rosenwald, Henry F. Crowell, A. C. Bartlett and Jane Addams, all of Chicago; Grace H. Dodge and James Bronson Reynolds, of New York; Dr. O. Edward Janney, of Baltimore; Wallace Simmons, of St. Louis; Charles Bentley, of San Francisco; Henry J. Dannenbaum, of Houston.

The purpose of the association is "To suppress and prevent commercialized vice and to promote the highest standard of public and private morals. To accomplish this purpose, the association shall strive for the constant, persistent and absolute repression of prostitution and the passage and enforcement of laws, for the rescue and protection of girls and women, for the promotion of knowledge of the social evil, its effects and results, and for the circulation of

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the best literature regarding it." This is proof that there is to be no compromise with methods of regulating vice by segregation and police rules; and indicates that law enforcement will be insisted upon in every community where prostitution has fastened itself securely. The house of prostitution is the market place where young girls are ruined, and where they are often sold for cash—as such, the disorderly house as an institution must go.

If the white slave traffic is to be wiped out—and it will be—the *demand* must be checked by education and by an insistent appeal to the conscience of men that will bring finally a single standard of morals; the *supply* must also be checked by education—by better industrial conditions for working girls; better recreation facilities, and decent housing will have their effect on both the supply and demand. The owner of the house, the keeper, the cadet and the procurers must all be attacked at the same time relentlessly; law enforcement, investigation, protection and education must be pursued at the same time, so that there will be effected a gradual closing in on the promoters of the traffic in women. The Vigilance Association believes it has a business organization that can do this thing.

The plan of campaign is suggested by the division of the work into the following departments:

Organization and promotion; Finance; Investigation; Legislation and law enforcement; International co-operation; Rescue and protection; Education; Library and editorial.

At the head of each of these departments will be an expert, who is acknowledged to be an authority in his field; so-called directors will do the active work in carrying out the policy and plans drawn up in consultation with the chairman. The general secretary will have general supervision and direction of the activities in all the departments, and will have at hand the threads of the three offices, which are to be situated in San Francisco, Chicago (central office) and New York (library and editorial department); the Department of Legislation and Law Enforcement will have an office in Washington, D. C.

Through its Department of Investigation, which is directed by George J. Kneeland, the association will stand ready to be of assistance to cities which are aroused to conditions and want trained investigators to go over the ground thoroughly. Such an investigation will mean a study of state laws and city ordinances relating to the moral and physical life of the community, a study of the machinery of government responsible for the enforcement of these laws and ordinances such as the Courts, Board of Aldermen, Department of Health and Police Department, and third, a field investigation of existing conditions.

There are any number of laws for the suppression of the social evil in every state in the Union. The owner and agent of property used for immoral purposes, the keepers of disorderly houses, the inmates, panders, procurers and cadets, the disorderly saloons and resorts—are all under the ban of the law, but as Mr. Kneeland says: "The ignorance of these laws and ordinances on the part of many good citizens is appalling, while the knowledge of them displayed by the vicious and those who defend them in the courts is amazing."

It is perfectly useless, of course, to be moral on the statute books, and unmoral or indifferent in enforcing the laws that indicate a desire on someone's part for decency. A half-hearted moral feeling and a great deal of hypocrisy on the part of a legislature,—some of whose members have been actually proved

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to be engaged in the traffic in women,—has not added anything to encourage the few who have to come in contact with the rottenness of political graft.

Following the completion of the investigation will come publicity, and the co-operation of the citizens whose aid will be offered without doubt when the situation is seen by the light of day. It will probably be desirable in many cases to form committees or associations of which the best men and women interested in civic affairs shall be members, so that the recommendations will with certainty be acted upon.

The Department of Legislation and Law Enforcement will make a comprehensive study of existing laws throughout this country and abroad; in fact, this is now well under way. Then tried and effective legislation will be recommended to all states, and the law enforcement work will be pushed to the limit. The chairman of this department is James Bronson Reynolds.

The educational problem which means, of course, education with reference to sex, is a difficult one and will be worked out slowly to produce the best methods of teaching sex hygiene. Courses should be scientifically planned for normal schools, so that yearly trained teachers may be graduated who are alive to the vital importance of the subject. Simple outlines of study should be available so that groups of different characters will have a guide as to the best way of approach, which authorities have devised. It is a dangerous subject to experiment with, and that is probably the reason why people have left the most important function of the body severely alone. Scientific knowledge, judgment, intuition—each are needed in turn—the last two must be inborn to develop, but the first can be given to all those who are willing to study. With this in mind, the Vigilance Association is expecting to give a course for teachers at the eastern office in July, so that the great number of students who come into New York for summer school work may have this opportunity for training. They will have at their disposal a well equipped library, which brings us to the library and editorial department.

The library classification includes all those subjects which are closely related to any study of prostitution and the white slave traffic, its causes, results and means of prevention. It has been collecting for the last three years (as part of the work of the National Vigilance Committee) material in the form of books, pamphlets, leaflets, papers and newspaper clippings from all over the country, and has a complete file of laws (concerning offences vs. chastity), which are kept up to date. An outline of the classification is given below in order that the point of view and resources of the library may be made clear: PROSTITUTION (Segregation, State Regulation, White Slave Traffic).

Recreation; Dance Halls, Amusement Parks, Playgrounds, etc.

Economics; Wages, Women, Labor, Children, Employment Bureaus, etc. Housing; Bad Conditions in Tenements, Congestion, etc.

Family Ethics; Marriage, Divorce, etc., Illegitimacy.

Diseases (Venereal); Feeble-mindedness, Degeneracy, Insanity, etc., Hospitals.

Immigration; Protection of Immigrants, Dangers of Transportation, etc.

Liquor Question; Saloons, Rained Law Hotels, Dance Halls, Disorderly Houses, etc.

Criminal Law; Federal and State, City Ordinances, Foreign Laws and Ordinances, District Attorneys Reports of: Chiefs of Police, Magistrates' Courts.

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Juvenile Courts, White Slave Cases, Decisions in Disorderly House Cases, Record of Convictions in White Slave Cases throughout the country.

Police; Control of Prostitution, Methods, etc., Magistrates' Courts, Probation, etc.

Custodial Cars; Penal and Reformatory Institutions, Houses of Detention, etc., State Farms for Women.

EDUCATION WITH REFERENCE TO SEX; Biology (The Science of Life).

Nature Study, etc.; Eugenics (Science dealing with all influences that improve the inborn qualities of a race), Heredity, etc.

The plan of work is, in brief, this:

First. The collection of material.

Second. Sifting material, preparing recommended lists of books and bibliographies, inducing libraries in this country to put the books recommended on their shelves; acting as agency for the best books.

Third. Carrying on inquiries, such as: the number of schools teaching sex hygiene, their methods of teaching; number of cities which have segregated districts (completed); relation between prostitution and low wages (now being carried on); etc.

Fourth. Acting as a Bureau of Information on any facts in connection with our work. All inquiries will be promptly attended to.

Fifth. Working out a means of communication whereby we may be informed concerning the efforts of other organizations in the United States and abroad.

The library expects to stand for the best literature in education with reference to sex, and as many people are turning to this field as a good one financially, there is a great mass of worthless stuff in circulation. An increasing demand for material along this line creates an immediate necessity for substituting the good for the bad.

The Department of International Co-operation will continue the relationship between the organizations in foreign countries and the American Vigilance Association. In eighteen countries there are Vigilance Associations or Committees, which are affiliated through the International Bureau in London. It will be the business of this Department to keep in close touch with our own government, which is doing good work on the white slave traffic through its Department of Justice, Bureau of Investigation and Department of Commerce and Labor, Bureau of Immigration. It will answer the numerous inquiries that come from abroad in regard to situations which foreign girls expect to enter in some capacity. Almost always they are legitimate, but many times it has been found on investigation that a girl would have gone into a disorderly resort, or saloon, if she had not been safeguarded in this way.

Through all the departments of work runs the spirit of co-operation, and we wish to extend this policy beyond our own organization to others which are now in the field. It is not the purpose of the Vigilance Association to absorb the numerous small societies with the same interests, but to push the work whenever it is possible, to act promptly and to make it clear that the American Vigilance Association is a growing force to be reckoned with.

CLIFFORD G. ROE, Executive Secretary and General Counsel.

REVIEWS AND CRITICISMS.

SCHULD UND SUHNE; EINIGE PSYCHOLOGISCHE UND PADAGOGISCHE GRUNDFRAGEN
DES VERBRECHERPROBLEMS UND DER JUGENDFURSORGE. By *Fr. W. Foerster*.
C. H. Beck'sche Verlagsbuchhandlung, München, 1911. Pp. V + 216.

The author's chief aim in writing this book is to mediate between the old attitude toward, and way of treating, delinquents and criminals, as it is represented by the classical school of jurisprudence, and the new doctrine of dealing with legal offenders, which received its strongest impetus from the American system of juvenile supervision and guardianship. The supporters of this modern method attempt to replace abstract, impersonal legal punishment of the deed by therapeutical and pedagogical measures adjustable to fit the individual wrongdoer. The author raises the question whether this individualizing tendency is really the only correct standpoint toward lawbreakers, or whether there is not also a real regenerative significance in atonement and a real educative power in the subjection to an inviolable objective order? And does not, he continues to ask, our impulsive and easily excitable youth especially require for their conduct such a strong guide as the unchangeable order of things? These questions are dealt with under the following chapter headings: 1. The psychological and pedagogical meaning of punishment; 2. the rights of the lawbreaker and the dispute of the schools of jurisprudence; 3. the idea of guilt and modern determinism; 4. reforms of punishment; and 5. the most important pedagogical problems of juvenile negligence.

The first chapter begins with a discussion of the significance of fixed objective norms. The author admits that the old method of dealing with criminals and especially with juvenile delinquents needs a thorough revision, but he strongly disapproves of having this more humane treatment take the place of legal punishment. The only excuse for such a practice is the fact that our present social and ethical conditions are in a transitional stage. But the continuation of such a substitution would soon lead to a confusion and weakening of the social and civic conscience and consequently to increase lawlessness. Instead, he holds that it is one of the chief duties of a pedagogical or therapeutical criminology to arouse in the imperiled characters strong inhibitory ideas and to deepen their notions of fixed limits and insuperable norms as a means of checking natural impulsiveness and moral unsteadiness. In this regard the due respect for the inexorable law is the best preventive as well as curative means for moral weakness. Just punishment is beneficial not only because it leads the wrongdoer to recognize the antisocial character of his deed, but also because it recognizes him as a responsible personality whose action is not the product of mere external circumstances but the wilful result of his own personal decision and innermost nature. There is finally also a purifying and propitiating element in punishment which should not be overlooked or underestimated. The secrets of conscience cannot be comprehended from a merely intellectual point of view.

The application of these principles to youthful delinquents is of special importance, because here the modern spirit of leniency is particularly inclined to substitute all sorts of means for regular punishment, instead of trying to eliminate the objectionable features from the old methods. The author considers

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the modern juvenile courts in many respects as pedagogically unsound and says: "not education *instead of* punishment, but *first* punishment and *then* education;" and again: "education instead of punishment has the same effect as bandaging a wound before cleansing and disinfecting it."

While discussing in the second chapter the question whether the evil deed or the evil-doer should be punished the author points out that nothing has a more civilizing and refining effect upon people than the due consideration of the rights of the criminal. If the judgment depends upon the judge's opinion of the indicted and not upon a universal law, the door is opened to the most dangerous arbitrariness which would soon do away with all respect for the authority of the law and undermine the people's conscience. But while the law deals with the crime in an objective manner, the criminal himself may very well be treated according to the subjective conditions underlying his deed. The fact that after completing his sentence the criminal is again turned loose upon society is not the fault of the law but a natural consequence of the present social conditions which can be remedied by proper means without conflicting with the law. Here again the rights of the ex-convict must be properly safeguarded and his individuality and mentality should be taken into account. This offers another opportunity for the conciliation and co-operation of the old and the new schools of jurisprudence.

The next chapter is a defense of the indeterministic view of the human will. The author speaks of a lower aspect of will which is inherited and casually determined by environment and education, and a higher factor which is of divine origin: the mysterious voice of conscience. In crucial moments the mind has to choose between the two, and upon this decision rests our notion of personal responsibility and our sense of guilt. The denial of the free will does away with this most powerful instrument of saving the criminal from himself. The author does not wish to detract from the importance of pathological inhibitions of the will, but he warns against ascribing every little human deficiency to this factor and rightly believes that the present tendency to exaggerate the pathological factor is due to the imperfect psychological knowledge of the average normal mind. In mild cases especially, where the best therapeutical treatment depends upon a strong appeal to the person's will-power, a pitying indulgence and excuses of the deed on pathological grounds will destroy the last remnants of moral resistance. Punishment is a mental medicine which in particular should not be denied to the pathologically inclined, because even with them atonement has a certain purgatory and therapeutic significance.

As to reforms of punishment the author demands in the fourth chapter a greater variety and finer gradation of penalties. He recommends in particular that persons who in a moment of passion or levity or grave temptation and inner conflict or other unusual constellation of circumstances have committed a deed which is entirely foreign to their sober character should not be either imprisoned or else entirely acquitted, but be required to engage in some positive activity of a social or charitable nature, perhaps under the guidance or supervision of organized charity societies or the like. He points out that in Holland and England the Salvation Army has already made such a beginning and that in the early Christian era the privilege of "intercession" by the Roman bishops represented the same principle. In connection with such a system of restitution

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he recommends that the present practice of "free penalties" under the supervision of probation officers be extended to adult first offenders and mild cases of delinquency. In this way many a soul can be more easily saved from a criminal career, many a family will not be robbed of its supporter and made to suffer more than the guilty, the welfare of society at large will be furthered by the work of those under probation, and finally the expenses of the state in providing for prisons and their maintenance will be greatly reduced. In advocating a more humane treatment of the prisoners in jail the author devotes seven pages to American institutions, especially to the Elmira Reformatory. He says it is false pedagogy to add to a strong reprobation of the deed a degrading and disdainful treatment of the unfortunates. He absolutely condemns corporal and capital punishment on the psychological ground that they stifle all sense of honor in the criminal, the executioner, and the witnesses and rather promote cruelty and barbarism.

In the last chapter the principles thus far outlined are applied to juvenile delinquency. Many concrete cases illustrate the difference between the old and the modern methods of treating young offenders. A special paragraph is devoted to "the American criminal pedagogy and its cultural basis." In discussing the psychology of juvenile delinquency the author points out that the same offense in different boys may be due to different motives which should be discovered and duly weighted before applying corrective measures. Many offenses are due to a spirit of initiative and adventure; the latter should be guided into useful channels so as to lead to acts of courage, bravery, and chivalry. The same holds true of the "gang instinct." Among the measures of prevention which the author discusses we may point to his emphasis upon less intellectual and more ethical instruction, upon less mechanical, repressive and more personal, inspiring school discipline, as well as to his strong recommendation of boys' clubs for social and recreative purposes. A final paragraph takes up measures of correction and describes in particular the juvenile court, the system of probation and suspended sentence, and reformatory institutions for youthful offenders.

A Report on Administration and Self-Government in the Service of Education in Reformatories by the Rev. Plass, director of the *Erziehungsanstalt am Urban* (Zehlendorf near Berlin) concludes this instructive and suggestive treatise, whose message of conciliation and co-operation deserves the most serious consideration of those who are deeply interested in the social and ethical welfare of our nation.

University of Georgia.

L. R. GEISSLER.

DIE ERGEBNISSE DER ZEITLICH ABGEMESSENEN BESCHRÄNKUNG DER FREIHEITSSTRA-FEN IN IHRER ANWENDUNG AUF VORBESTRAFTE RECHTSBRECHER UNTER BESONDERER BERÜCKSICHTIGUNG DER JUGENDLICHEN RECHTSBRECHER—KRIMINALPOLITISCHE STUDIE IN STATISTISCHER BELEUCHTUNG. Von Dr. med. Gustav Beck, in Bern. Erweiterter Separatabdruck aus der "*Zeitschrift für schweizerische Statistik*," 2. Lieferung, 47. Jahrgang, 1911, pp. 165-208.

Apparently, the main purpose of this elaborate study is to prove by means of the statistical method what really no longer requires proof, that in a certain number of cases definite sentences of imprisonment do not meet the requirements of society, whether it be the question of its protection or the reformation of the individual. In an elaborate introduction, a series of theses is propounded,

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only one of which contains an especially noteworthy recommendation. In this (the fifth), the author demands that in the case of offenders who through repeated anti-social acts and punishment have shown themselves to be habitual criminals the courts shall turn them over without trial to an administrative board to which he gives the name of penal guardianship commission (*pönale Vormundschaftsbehörde*). He would give to the same commission charge of the juvenile delinquents who are first offenders, and in consequence this board should work in close co-operation with juvenile courts.

Much of the material utilized relates to the Canton Bern and covers a period of ten years. Throughout the chief tables a distinction is maintained between first offenders, recent recidivists and old recidivists, who are, respectively, designated as singularists, new-pluralists and old-pluralists. It may fairly be questioned whether this distinction is altogether happy. It would seem, among other things, to result in a classification whereby offenders of quite dissimilar categories are brought into close relation, statistically. Habitual burglars, for instance, should not be considered in the same class with beggars and vagrants.

While some of the tables are of questionable worth and not altogether free from errors, others are quite significant. For instance, table 4 shows that of 17,287 male offenders, 2,919 have been sentenced more than four times, while 9,629 were punished only once. The statistics of female offenders reveal similar conditions. The purpose of the table is to answer the question how large, in proportion to a given population, the number of delinquents who, according to the thesis alluded to, should be given in custody of reformatory institutions. Assuming that the duration of such custody would average a minimum of three years, the author finds that the number in question would be about 1,400 (in a population of about 600,000). For the whole of Switzerland, this would give a total number of persons thus to be held in custody of about 7,000.

Table 5 contains some instructive material covering the age groups into which the first offenders and the recidivists fall. On the whole, the facts brought out correspond to those yielded by the criminal statistics of other countries. The general conclusion in regard to juvenile offenders is that the earlier the criminal career is begun the greater is the likelihood of its continuation.

The classification of juvenile delinquents attempted by the author on a psychological basis will hardly win general approval. In attempting to account for the causes of delinquency, he lays peculiar stress on lack of education. On the other hand, he seems to overlook general social and economic factors and particularly ignores abnormal mental conditions. Since the author has invented a classification of his own and also groups cases according to a psychological basis of his own invention, it is almost impossible to make any comparisons with other criminal statistical studies.

In conclusion, he gives a selection from what he calls criminal biographies, relating, of course, to recidivists. As no attempt is made to analyze the individual biography the material does not offer much of value.

It may fairly be questioned whether the immense amount of labor expended on this statistical study has been worth while. One can scarcely say that the author arrives at new and specially significant conclusions, nor does he incite the reader to very fruitful speculations. Nevertheless, the student of criminal statistics may find in it some material of use.

Boston.

JOHN KOREN.

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DIE IRRTUMER DER STRAFJUSTIZ, UND IHRE URSACHEN. By *Dr. Erich Sello*, Justizrat, Berlin. Decker's, Berlin, 1911. pp.

This is the first volume of Sello's work and deals with death penalties and life sentences among the judicial errors of modern times. The apprehension that justice might miscarry in spite of the most diligent efforts of the judge and jury to fathom the true facts of a given case always exists to a greater or less extent in the minds of those who have anything to do in a professional way with the law. This just apprehension is kept alive by the not very infrequent accounts of the daily press of some grave error of justice. It was this motive, made more acute by the discovery of some very gross errors in the author's own practice which prompted him to make a systematic collection of data on this subject from the annals of justice of the various civilized countries, and thus we have in Dr. Sello's book a very illuminating work on this subject.

At the first glance at the book one is likely to get the impression that it is of a semi-popular kind, but a diligent perusal of its contents will soon convince the reader of the author's sincerity and of the painstaking labor with which he endowed this volume.

This collection of instances of errors of justice, culled as it is from practically every civilized country of the world, cannot fail to serve to put every jurist on guard as to the many possibilities of error and to the host of contributing factors which may bring about a judicial crime. The part suggestion plays in evidence before law is amply illustrated in this volume and from this point of view it should be of especial interest to the psychopathologist. This potency of suggestion and the part it plays both in the direct and cross-examination of witnesses has been amply discussed by a number of psychologists, among whom Prof. Münsterberg may be mentioned, and in the volume before us we have more or less incontrovertible facts to substantiate this. To the English speaking public those cases taken from the annals of England and the United States will be of especial interest. One will find a discussion of such prominent cases as those of Guiteau and Czolgosz, and the very illuminating English case of William Show, who was hanged for the murder of his own daughter, later findings having shown beyond much doubt that this supposed victim of murder had committed suicide.

The author goes especially into detail in discussing the errors committed in sentencing unquestionably insane individuals, and the frequency of such instances again emphasizes the importance of adequate provision for expert testimony where the least suspicion of insanity arises.

The expert's activity, however, should not be confined solely to the accused. How many innocent people have been the victims of judicial crimes because of the testimony of a hysterical woman or psychopathic children? The suggestibility of children and this class of women is well known and under the manipulations of a dexterous lawyer they can be made to testify to anything. Of especial interest is a famous German case in which one of the accused persisted in his confession of guilt to the very end, and a wholesale judicial murder was only averted at the eleventh hour through overwhelming evidence from outsiders who proved an unshakable alibi in the case of this persistent confessor of guilt. Such a phenomenon can only be accounted for on the ground of a diseased mind, and when, as it happened in this case, the lives of supposed accomplices are endangered, the importance of establishing the mental status of such confessor

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becomes at once apparent. Revenge, malice, prejudice, mob-intoxication are some of the other factors which contribute to the altogether too frequent judicial crimes. Aside from being of inestimable value both to the jurist and psychopathologist, the book can be read with a great deal of benefit and genuine interest by any enlightened person, and in a country like this with our jury system, one can readily see how much good such a work might do. We heartily recommend Dr. Sello's work and believe it should find a place at least in the library of every jurist and psychopathologist.

BERNARD GLUECK, M. D.

Government Hospital for the Insane, Washington, D. C.

ÜBER PERSONLICHKEIT, AUFGABEN UND AUSBILDUNG DES RICHTERS. Von Dr. A. N. Zacharias, Judge of the Court of Appeals of Hamburg. J. Guttenberg, Berlin, 1911. pp. 161.

This book belongs to the rapidly growing literature in Germany dealing with the reform of juristic studies in preparation for the bench and bar. The changes in the commercial and industrial life of Germany like those in the United States have awakened a feeling in both countries that the lawyers and judges have not kept pace with the times, and that their traditional training is no longer adequate. The author seeks to contribute to the solution of the problem how judges are to be better fitted for the discharge of their judicial functions from his personal experience as judge in the most important commercial city of Germany. In his judgment the main defect in the present preparation of the German judge is his failure to understand the life of the people whose controversies he is called upon to decide. Throughout the book, therefore, the author emphasizes the necessity of choosing as judges in commercial cities or industrial and agricultural regions men whose personality and preparation has fitted them for their respective tasks. Practical suggestions are given as to the manner in which a person preparing to be judge in a commercial city can obtain the necessary information and experience.

The author is of the opinion that the study of Roman law, notwithstanding the adoption of the civil code, will remain of the greatest benefit to the judge because of the juristic training it affords. The necessity of a general knowledge of physics, chemistry, and of modern languages is especially mentioned. The author believes, however, that the general courses in political economy (exclusive of courses on Finance) are too general and abstract in their character to be helpful to the judge. On the other hand, he strongly recommends special courses dealing with the actual conditions in commerce and industry.

Persons acquainted with the present preparation of German judges will find the book both interesting and instructive.

University of Wisconsin.

E. G. LORENZEN.

THE HISTORY OF THE PRISON PSYCHOSES. By Paul Nitsche and Prof. Karl Willmanns. Authorized translation by F. M. Barnes, Jr., M. D., and Bernard Glueck, M. D., with an introduction by Wm. A. White, M. D., *Mental and Nervous Disease Monograph, Series No. 13*, pp. 84.

The "insanity dodge" clamor is perhaps more prevalent in this country than in any other. The mere suggestion of a defense of insanity in a criminal case often suffices at once to raise the suspicion on the part of the prosecution of an

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endeavor to dodge the law. All the contentions of the medical profession to the contrary will, however, remain unheeded until those charged with the administration of the law will have acquired a better insight into the nature of the criminal. It is certain that this insight will never be gained by the legal profession if they continue to administer the law according to the crime, leaving out of consideration the perpetrator of such crime. In dealing with the criminal we are dealing with a human being subject to the same emotions, the same desires and passions as any other human being and the mere fact that a man guilty of crime coincidentally or subsequently develops a mental disorder, is not sufficient cause to suspect him of endeavoring to dodge the law. Unfortunately the subject of the mental disorder in prisoners and criminals has been quite neglected in this country and an English translation of this little volume should certainly be hailed with enthusiasm. The authors bring before us a comprehensive review of the so-called prison psychoses, and while from the title it would seem that the authors confined themselves to a discussion of the mental disorders occurring in prison, the book likewise throws a good deal of light upon the nature of criminal man. A perusal of its contents will undoubtedly open a new vista to those interested in the criminal and a more intelligent administration of the law will be the result. For this reason it is heartily recommended.

BERNARD GLUECK, M. D.

Government Hospital for the Insane, Washington, D. C.

TRIAL OF WILLIAM PALMER. Edited by *George H. Knott, Barrister-at-Law*. William Hodge & Co., Edinburgh and London, 1912, pp. 320.

No greater service could be performed for the criminal trial lawyer, in fact, for the jury lawyer in general, than the presentation in compact form of the notable trials of the last century. To Messrs. Hodge & Company are due, accordingly, the heartfelt thanks of every barrister. In the "Notable English Trials Series" such cases as those of Mrs. Maybrick, Lord Lovat, Dr. George Henry Lamson, etc., either already have been, or very shortly will be, published.

In many respects the trial of William Palmer is the most fascinating, as it certainly is the most mysterious, of them all. Sir James Stephens observes in his celebrated "History of the Criminal Law" that, as a whole, it is one of the most eminently deserving of attention in all legal history. The charge was murder by the administration of strychnine. No traces of the drug were found in the organs of the deceased. Medical and medico-chemical evidence constituted the greater part of the proceedings and the most technical testimony on questions of physiology, chemistry, anatomy, and toxicology was adduced both by the Crown and the defendant. Such leaders of the profession as Sir Alexander Cockburn, then attorney-general, and Mr. Serjeant, later Mr. Justice Shee, were engaged. Palmer himself, shortly before execution neither positively admitted nor denied his guilt, but simply stated, "I am innocent of poisoning Cook by strychnia."

To the American reader, perhaps, the chief point of legal interest is the remarkable contrast between the English criminal procedure and our own. The trial court, far from being a mere automaton or "dummy," not only took a very considerable part in the conduct of the case, but very firmly and unequivocally intimated to the jury its opinion of the probative value of the divers facts and circumstances brought out in the evidence.

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The book is well arranged, fully edited and quite worthy of the attention, not only of the legal fraternity, but of all students of human frailty.

University of Illinois.

I. MAURICE WORMSER.

A MANUAL OF AMERICAN CRIMINAL LAW, INCLUDING FORMS AND PRECEDENTS. By *Lewis Hochheimer*. King Bros., Baltimore, 1911, pp. 337.

This is a summary, not an exhaustive treatise, on American Criminal Law. The first 110 pages cover the substantive law, being the statutory definitions of the different offenses, with adequate citation of authority.

The next 160 pages cover the matter of procedure, both by indictment and information, including appeals and special proceedings, such as certiorari, habeas corpus, and the like, resorted to by the defense in appropriate cases. It also contains many forms. Then follows a table of the cases cited and an index.

It is not an exhaustive treatise, neither does it purport to be. The general practitioner will have to consult the statutes and decisions of his own State, both as to definition of offenses and appropriate procedure.

However, the book is an accurate and succinct summary of the matters which it treats. It will give any practitioner a good general survey of the law on any particular subject. Following this up with a verification of the authorities in his own State should lead one rather quickly to the precise rule upon any point desired. The book, if used in the above way, will be useful to any practitioner.

The author has spent much time to insure accuracy of statement, and apparently has succeeded.

Wausau, Wis.

C. B. BIRD.

TEXT-BOOK OF MEDICAL JURISPRUDENCE AND TOXICOLOGY. By *John J. Reese, M. D.* Eighth Edition revised by D. J. McCarthy, A. B., M. D. P. Blakiston's Son & Co., Philadelphia, 1911. Price \$3.00.

This concise text-book, designed for the student, attorney and general expert, has been somewhat amplified and modernized by the editor. The chapter on Insanity, the classification of the forms of insanity and the mode of commitment of the insane has been extensively revised. The popularity of the book is such that the reviewer is prompted to suggest, in future editions, the correction of more than three score typographical errors, the abandonment of the Silvester method of resuscitation (p. 161), some mention of iodoform poisoning and a general consideration of the effects of various embalming processes upon the cadaver.

Jefferson Medical College, Philadelphia.

E. A. SPITZKA.

DIE GESETZGEBUND UBER POLITZEIVERORDNUNGEN IN PRUSSEN. By *Otto Lindemann*, Justizrat im Justizministerium. J. Guttentag, Berlin, 1911, pp. 189.

In the introduction to this volume, which is concise, exhaustive and interesting, the author has defined the police power, traced its history, outlined the organization of the police authorities in Prussia, and clearly shown the jurisdiction of the various police authorities in the enactment of police ordinances, together with the limitations placed upon their jurisdiction. The author has not expressed any new or original ideas in the philosophy of the police power, but the reviewer

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has never seen a clearer exposition of this subject than has been given in this little book.

In the body of the book the author has given the Prussian police law of March 11, 1850, section by section, and has introduced at the end of each section all of the amendments to date, as well as copious notes, which possess both practical and theoretical value. A subject index at the end of the book adds much to the usefulness of this book as a *vade mecum* for German police officers and prosecuting attorneys.

It is unfortunate that the typography of the book is poor, and this detracts from the excellent work of the author. The book is of great value to police officers in Germany, but possesses little that is of interest or of value to American police officers.

New York City.

LEONHARD FELIX FULD, PH. D.

FORTPFLANZUNG VERERBUNG RASSENHYGIENE. By Prof. Dr. Max von Gruber and Priv.-Doz. Dr. Ernst Rüdin. J. F. Lehmann, München, 2nd edition, 1911. pp. 191, 230 tables and figures.

One of the exhibits of the international hygiene exposition in Dresden last year was devoted to race hygiene. In this group were included such exhibits as would aid in a clearer understanding of the present biological status of the human race and lead to better and more universal attempts to secure an improvement of the race. The pamphlet under review was intended as an illustrated catalog to the race hygiene group explaining the tables, charts, etc., which made up the exhibit, and which would otherwise have been difficult to understand. Another desire in the preparation of the pamphlet was that it might be of value to general readers as a summary of the present state of our knowledge in this line. Its value as a general treatise is somewhat lessened by the demands of its primary object.

There is no complete analysis and careful correlation of the facts, the text being mainly an explanation and a description of the tables and other exhibits. Of necessity, also, there is comparatively little discussion of facts and causes and few conclusions are drawn. In this lies its principal defect for the general reader. Furthermore, the explanation of tables is sometimes several pages away from the tables themselves, and hard to find. The cuts are prepared from the large tables and charts of the exhibit and the great reduction necessary has resulted in the loss of some detail, and a crowding and indistinctness of others.

A very large number of collaborators and contributors to the exposition, eminent investigators in this country and abroad, brings together in one place an unusually large amount of illustrative matter of various sorts and from various viewpoints. In the recording of this in one place the pamphlet has its chief claim for merit. And whatever the drawbacks, a reading will be suggestive and valuable. It assumes little technical knowledge of the reader. Starting with simple fundamental biological facts as reproduction, it carries him through the more complicated matters of inheritance, degeneration, etc., which can be better appreciated because of the proper biological basis. It is this biological treatment which is to be commended, for the sociological matters which are considered quite largely, and which are important, are at the bottom biological and any consideration and treatment of such facts which

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neglects the biological basis are incomplete and apt to lead to error and to harm

The scope of the pamphlet is suggested by the following chapter headings plus summaries:

1, Reproduction in animals and plants; 2, Variability. Variation in animals and plants. Statistics and graphic representation, with cautions on the use and interpretation of the same; 3, Selection and mutation. The conclusion is reached that selection produces nothing new "but can only separate those characters which were already present in it [the race] before the selection." 4, Inheritance of acquired characters. A discussion of variability and modifications, with illustrations bearing on the question whether adaptive modifications are transmissible. 5, Laws of inheritance, Mendelism. A discussion chiefly of alternative inheritance studied through hybridization, in which certain different characters do not become blended in the hybrid and give the appearance of an intermediate, but they remain distinct (though often latent in the hybrids) and separate again in later generations into the original characters, or into new combinations of the same original characters. 6, Inheritance in man. Considers the inheritance of family traits, of mentality, of disease and of malformations. 7, Degeneration. Data is presented which suggests a deterioration of the human race. Data such as unfitness for military service in Germany, relation of this unfitness to residence in city or country, dying out of families, reduced fertility or infertility in the human race. Some discussion of causes. 8, Race hygiene. Numerous tables on the relation between the age of parents and infant mortality, number of children and infant mortality, mortality of first and last born children, influence of alcohol on the offspring, close breeding and race crossing. 9, Neo-malthusianism. There is a biological necessity for the production of a certain number of fit children to maintain the race; the present tendency of the best endowed people is to reduce the families or remain childless on account of luxury, convenience, social struggle, with no thought of duty to the race. This leads to race deterioration. There are tables which show the number of children according to the wealth of parents, also to the occupation of the parents, and the like. Suggestions are given as to legislation and possible subsidy to secure the increase in capable and sound offspring necessary to prevent race decay.

A bibliography of about 500 titles covering the various phases of the subject, and indicating sources for further study adds to the value of the pamphlet.

Northwestern University.

GEO. T. HARGITT.

DI UNA CONCEZIONE UNITARIA DEL DIRITTO PENALE. Per *Eduardo Massari*; pp. 10.

This is a review by Eduardo Massari of Silvio Longhi's "Repression and Prevention in the Criminal Law of the Present." Longhi is one of the most distinguished thinkers and writers on Criminal Law in Italy. This book, says Massari, is the apex of the pyramid of interpretations, analysis and synthesis which Longhi has been building for years.

The work is voluminous—it consists of 1028 pages. It contains illuminating discussions of all the problems in criminal law and criminology which have come up during the last century. The classical and the positive schools of criminology have justice done them. There are fine narratives of the battles between these two schools, and of the influence of the schools upon each other, and upon legis-

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lation. Longhi expounds the fundamental doctrines of criminal law—imputability, *dolus*, *culpa*, attempt, conspiracy, accessory and accomplice, motive, modifying causes of guilt, personal and real circumstances of the criminal act, recidivism. The author scientifically interprets criminal law as it is without the preconceptions of any school, and deduces what it may in the future be. Accordingly he makes a comparative examination of legislation and juridical thinking during the last century, and finds that the old limitations have gradually been widening. A rectification of the confines, therefore, is necessary.

The essential propositions of criminal and penal law Longhi lays down are as follows:

The bases of present penal law are repression and prevention. All those who are capable of understanding and feeling the sanctions of law are subject to penal law in its strict sense; all those who by their actions, independent of whether they are intellectually or morally capable, show that they are dangerous, that is, likely to commit other crime in the future, are made subject to the rules of society made for its protection. The act that is the moving force of repression must have occurred, the act that is the moving force of prevention is only feared, considering the dangerousness of the offender. This dangerousness is arrived at by a study of many elements which are ascertained juridically.

The most important facts which the author discriminates are the following:

1. **Imputability:** Facts demonstrate that volition is the essence of penal responsibility. And so the positive school is wrong in making the criterion social responsibility and protection. But the positive school is right in so far as some crimes are concerned, namely in those which are neither voluntary nor involuntary and which are rebellious to treatment by the common penal law.

2. So in the case of those crimes which are only possible, prevention is the rule that governs, as in the criminal insane, and semi-insane. Institutions for the reception and care of these unfortunates are to be found in England, the United States, France (1893), Japan (1889), Norway (1902), Switzerland (1896, 1903 and 1908), in the Argentine Republic (1904), in Austria (1909), in Germany (1909) and in Italy. Under the head of prevention there fall also the laws against alcoholism, habitual criminals, vagabondage, idleness, begging, and juvenile delinquency.

3. **Sanctions.** Taking a comparative view of legislation it is seen that there is one class of reactions in relation to actual crimes, and another class in relation to preventive rules. The first class has a retributive character. The absolute will of the judge is repugnant to it, but a determined legislation gives it spirit. It is relatively fixed, has the object of punishing, and is entirely independent of the will of the convict. The second class of reactions, on the other hand, admits the principle of indeterminateness. Its object is to cure, to eliminate, to reform, to put to the proof; and it allows of the power of the judge, or of some other authority, to decrease or to increase the stay out of society of the offender.

Longhi's book is distinguished from the works of Wangha, Cuche, Hoos and others. It makes good use of these works, but it is marked off from them by a strong individuality of conception, and an organic wholeness. The central point upon which the demonstration of the author turns is the affirmation of the penal, rather than the administrative, character, of immediate prevention against crime.

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The proposition runs counter to the current opinion, but the evidence adduced by Longhi seems to bear out his position. .

New York City.

ROBERT FERRARI.

L'IDENTIFICAZIONE DEI DELINQUENTI E LA FUNZIONE DI POLIZIA—NELL'ATTUALE MOMENTO GIURIDICO E SOCIALE. Per *Dott. Giovanni Gasti*. Tipografia delle Mantellate, Roma. Pp. 22.

This lecture by Dr. Gasti on the identification of criminals, and the function of the police at present considered from the social and the giuridical points of view is the first of a series of lectures given at the School of Scientific Police at Rome.

We in America are accustomed to hear in large cities constant tirades against police inefficiency. We hear the adverse criticism of our own police so often, and laudation of the foreign police so continuously that we really have a fixed idea that our police is the worst in the world, and any other a thousand times better. But let us take heart. We are not alone in disparagement of what is ours. Dr. Gasti begins his interesting and thoughtful lecture by deploring the fact that Italians are always minimizing the good of their force and magnifying the worth of the police systems of others. There are, says he, good qualities and defects in all systems, and comparative judgments which are overwhelmingly unfavorable to the Italian system are not justified.

There are certain factors which are now operating intensely all over the world, and these are they which make the work of the police in all countries so difficult. They are giuridical and social factors. Among the former are the ever increasing guaranties of personal liberty, public and private. These guaranties are the result of an elevated giuridical and civil conscience of the citizens and subjects and also of the keen responsibility which functionaries are now so strongly feeling. But every such loosening of the law is a binding of the arms of the police. Again, the statutes are becoming more bland: punishments are growing less severe. We see laws whose mildness sometimes approaches weakness, and sentimentalism. These laws are efficacious for first offenders. But habitual criminals laugh at them. Among the social factors are the facilities for inter-communication and transit between the different nations; the phenomena of urbanism; the difficulty of getting members for the force; the progress of science. The criminal rushes away from his country into another; the police move slowly and have no efficient system by which the offender may be detected in a foreign land. So it happens that there is a dangerous exchange of the most pernicious criminals between transatlantic countries especially. The great increase in population in cities produces moral infection and crime, far beyond the infection and crime of more sparsely settled places. This great increase is dealt with by the police with waxing difficulty. We in New York have lately had a strong illustration of this. Two men, "Gyp, the Blood," and "Lefty Louie," were wanted for the murder of a notorious gambler, who, it was alleged, had been killed the day he was to appear before the Grand Jury to testify to facts which would indicate that the police were in league with gamblers and were protecting them for a consideration. They left town, and roamed about New York state for a month, and then came to live right in the city in a two-room flat. Their wives lived with them. They went out often. They even once went to police headquarters where at least half a dozen detec-

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tives knew them by sight. Detectives followed their wives, who always cleverly eluded the officers. The women took taxicabs, street cars, automobiles, and the detectives lost them. For one month these two men ranged the city free.

The author believes there ought to be two presumptions of law—one of innocence for the first offender, and one of guilt for the recidivist, and the habitual criminal. He does not doubt the wisdom of more lenient laws, the object of which is to make the anti-social man adapted to social life. But he stands firmly upon the ground that those who have proved themselves dangerous to society ought to be more harshly treated for the protection of society itself. He does not believe in moral responsibility as a criterion of penal law, but in social responsibility which is based upon the dangerousness of the offender to society, and his rehabilitation.

The presumption of innocence is, in the view of the present writer, only hypocrisy. Our theory and our practice are at variance. We shoot at the Continental system when we ought to be strengthening our own fort. At the least, the Continental system conforms to common sense, and common act. Too much coddling of the individual means too much neglect of the community. We may as well recognize rights where they ought to be recognized. The interesting logical problem presented is that these very men who go into raptures over the palladium of individual liberty tax criminological positivists with sentimentality because the latter wish the personality of the criminal to be studied, in order that proper measures of security may be taken against him.

The weakening of the police systems caused by these social and giuridical matters, and the fact that laws generally now make some distinctions in severity of punishment between first and habitual offenders and recidivists, demand that some method be put into use to strengthen the elements of order in society. Italian criminals in Italy do not now very commonly assume false personalities to escape punishment as relapsers or habitual offenders; but foreign criminals who escape to Italy do, and Italian criminals will more and more do so as the laws become more enlightened and the distinctions above noted are well recognized and unswervingly acted upon. If a man changes his name and his abode, and that part of his physiognomy susceptible of change, it is impossible under ordinary circumstances to discover the genuine below the specious. The old methods have to be thrown into the scrap heap. New times bring new conditions. And new means must be employed to meet these conditions. The proposals of the lecturer are that the Bertillon system of identification be adopted and perfected, that a cosmopolitan organization of the police be effected, that international congresses be held by which ideas can be exchanged, and personal acquaintances made, that the duty of exchange of functionaries be recognized, that an international periodical bulletin for the search of offenders be instituted, and that, in short, the relations of the different police systems of the world be continuous and helpful.

New York City.

ROBERT FERRARI.

Journal of the American Institute of Criminal Law and Criminology

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CONTRIBUTORS TO THIS NUMBER

Edwin R. Keedy is Professor of Law at Northwestern University. He is a graduate of Franklin and Marshall College and the Harvard Law School. He was the first Secretary of the American Institute of Criminal Law and Criminology, and is now the Secretary of the American branch of the International Union of Criminal Law. He was a member of the commission which investigated and reported upon the criminal procedure of England, and is the author of a number of articles on criminal law and procedure.

Charles G. Cumston, M. D., was educated in Boston until the age of sixteen years in public and private schools. He then went to Switzerland and took degrees in the University of Geneva, B. S. (1898), M. D. (1893). He was surgical assistant in the University Clinic of Geneva for four years. Returned to Boston in 1894 and has practiced surgery ever since. He has written extensively on surgical topics and the history of medicine. Was five years Professor of Surgical Pathology in Tuft's Medical School. Member of a large number of medical societies in America and Europe, among which may be mentioned Societies of the History of Medicine of France and Germany. Was elected honorary member of the Surgical Society of Belgium in 1900, and of the Urological Society of Belgium in 1907, on account of various contributions to the science of surgery and urology.

Guy G. Fernald, M. D., graduated from Framington State Normal School in 1886. Taught and studied at Berwick Academy and St. Johnsbury Academy. Degrees of A. B., A. M. and M. D. were conferred in the years of '93, '96 and '99, respectively, by Dartmouth College. He was Principal at the Perkins Institution for the Blind in '93-4 and '94-5 and disciplinarian and teacher in Friends School, Providence, in '95-6. He was on the staff at the McLean Hospital, Waverly, Mass., from 1899 to 1908, five years of which time were spent as assistant of Dr. C. A. Hoch, who is now Director of the New York State Psychiatric Institute, Wards Island. Since 1908 he has been resident physician at the Massachusetts Reformatory, Concord, Mass. Publications: "The Defective Delinquent Class: Differentiating Tests," in the April number of American Journal of Insanity, 1912; "An Achievement Capacity Test," in the May number of American Journal of Educational Psychology; "Suggestion in Medical Practice," in Boston Medical and Surgical Journal, and "The Massachusetts Reformatory Method of Differentiating Defective Delinquents," in Boston Medical and Surgical Journal.

Salvatore Ottolenghi, Professor of Legal Medicine in the Royal University of Rome, was born in Asti, Piedmont, May 21, 1861. After the successful completion of his medical studies under Lombroso, he became his master's collaborator and contributed to Delinquent man, Delinquent woman and the Archive of Psychiatry and Criminal Anthropology. In 1893 Ottolenghi was nominated Professor of Legal Medicine at Sienna. He founded in 1902 the School of Scientific Police under the auspices of the Secretary of the Interior. In it is centralized the Italian service of identification. Ottolenghi is still at the head of the school. He was appointed Professor of Legal Medicine in Rome in 1903. To his initiative is due the foundation of a Society of Legal Medicine in Rome. He has published much on criminal anthropology, legal psychiatry and medicine and scientific police matters. The most important works on criminal anthropology and legal psychiatry are studies on the senses of the delinquent man and woman, on different forms of epilepsy, and on hypnotism and suggestion. For fifteen years he has been especially interested in the scientific police question. He established the first school of its kind for higher officials of the governmental police force. The school's purpose is to give to the future commanding officers training in criminal anthropology, sociology and biology, and enable them to make use of the best science offers in their efforts to prevent crime and repress criminals. Professor Ottolenghi is editor of the Bulletin of the School of Scientific Police and of the proceedings of the Roman Society of Legal Medicine.

Victor von Berosini, Ph.D., for the last six years has been a resident of Hull-House. Previously he served as a German officer and was a student at Geneva and Berlin. He is at present a student of sociological problems, a probation officer of the Juvenile Court and of the Juvenile Protective Association in Chicago.

EDITORIALS.

PROSPECTIVE LABORATORIES FOR THE STUDY OF CRIMINALS.

The doctrine that the criminal is what he is because of his original character; because he has reverted mentally and physically toward his savage ancestors; or because, as a savage he has been driven to crime by his very nature, was in the past a simple way of conceiving a complex situation, and one that could hardly fail to bear fruit both good and bad. On the one hand, it stimulated observation and hence had a scientific value. On the other hand, it eliminated or crippled the doctrine of individual responsibility without immediately offering a substitute or compensation, and therefore encouraged the development of a sentimentality, in dealing with criminals, a result that is hardly conducive to social security, to say the least. The reaction of the French school, particularly through M. Lacassagne, was especially salutary, since it properly emphasized the social factor in the life history of the criminal, and so the idea of the modified responsibility of the offender is supplemented by that of an obligation on the part of society to protect the interests of the group by various means—among others by dealing with the culprit, not merely in the light of the fact that he has done a wrong against organized society, but in the light of all the circumstances surrounding the case, including his health, record, education, and educability.

This is a modified Positivism and it has found expression in the establishment of numerous laboratories of criminology in prisons, which confine their researches to no limited sphere. It has already found substantial recognition, furthermore, in courts of criminal jurisdiction. The reliance of the court upon the report of probation officers, for example, as one item to be taken into account in disposing of a case, is an illustration of the practical application in courts of law of the broad Positivism of our generation.

Committee A of the Institute of Criminal Law and Criminology, Chief Justice Harry Olson of the Municipal Court of Chicago, chairman, recommends the establishment of criminological laboratories in all such courts. The committee report contemplates such a diagnosis of a criminal from the psychological, neurological, and sociological points of view, as may be of immediate practical value to the judge who must sentence

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the defendant before the bar. To be of practical service to him it must supply him with exhaustive knowledge of the individual case, in order that through his sentence he may adequately protect society, while doing the best that is possible for the prisoner as an individual; and this purpose is made a hundred fold more difficult of realization because it involves the education of the prisoner in as far as he may be capable of such transformation. The data supplied to the court by the laboratory experts will assist the judge in determining how he may best perform his protective service to society.

The committee has another purpose in view; the accumulation of a body of anthropological, psychological, neurological, and sociological data concerning criminals that will ultimately be of great scientific value in a field that has until now been too much neglected. The laboratory, under the committee's plan, will be an institution for research as well as for more immediate practical service.

Judge Olson himself is earnestly working toward the adoption of the committee recommendations and the establishment of a laboratory by the city of Chicago in the Municipal Court over which he presides. It is not improbable that, in the near future, something may be accomplished in this direction. It should be noticed here, by the way, that he has made very substantial progress toward securing favorable action by the Commissioners of Cook County on a proposition to establish a chemical laboratory in the office of the County coroner. If the practical details could be arranged, such an institution could co-operate in numerous ways with the proposed criminological laboratory in the Municipal Court.

As a further indication of the growing scientific attitude toward criminological problems, there is quoted here a bill that has been recently introduced in the Assembly of the State of New York by the Honorable Louis D. Gibbs:

"An act to amend the code of criminal procedure, in relation to creating a board of criminal examiners in cities of the first class and defining the powers and duties of such board.

"The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. "The code of criminal procedure is hereby amended by adding thereto, after section 485-a thereof, a new section, to be section 485-b, to read as follows:

§ 485-b. "Board of criminal examiners; powers and duties: The judge or judges, justice or justices of every court of record having criminal jurisdiction within any city of the first class shall appoint a professional criminologist, a physician and an attorney and counsellor-at-law to be members of a board, thus constituted, to be known as the board of criminal examiners of such city. Vacancies in the membership of such board shall be filled by appointment in the same manner, as such vacancies may occur from time to time. The governing body of such city shall provide suitable offices for such board in or near the court house or other place in which the sittings of such court are held, and

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may provide necessary clerical and other assistants therefor. The members of such board shall be deemed officers of the court. The members of the board shall select one of their number chairman. The board may adopt rules and regulations governing the exercise of its powers, subject to the approval of the judge or judges, justice or justices of the court. The powers, duties and functions of such board shall be as follows: After any person has been convicted of a crime or has pleaded guilty to a criminal charge, the judge or justice before whom such conviction was had or plea made shall report the fact of such plea or conviction to the board immediately, and before any sentence is pronounced upon the defendant the board shall examine him and report to the court its opinion as to the suitable classification and disposition of such convicted person. Sentence shall not be pronounced upon the defendant until the board has made such report or has, within a reasonable time to be prescribed by the court, failed to make a report. The said commissioners shall each receive an annual salary of two thousand five hundred dollars, to be paid in the same manner and from the same funds as the salaries or wages of other officers of the court, in such city. The members of such board are removable at any time at the pleasure of the judge or judges, justice or justices by whom they were appointed.

§ 2. "This act shall take effect September first, nineteen hundred and thirteen."

The bill as quoted above evidently contemplates only the immediate practical service that the criminologist and his collaborators may render to the court. It could easily be made a means of recording a body of data that would have permanent and increasing scientific value. The opportunity for modifying the bill in this particular should not be neglected. What a lawyer can accomplish on such a board as that contemplated that will not already have been secured through a fair trial of each individual culprit is not apparent. It would seem that without him the board would be complete.

It is high time that we had such laboratories as those proposed to place before the courts with the weight of scientific authority all the facts concerning a prisoner's life history and family history as well, which may properly influence the action of the bench. It should then be unnecessary—if it is not already so—and even impossible for a district attorney to take it upon himself, for any reason, assumed or otherwise, to make and fulfil a promise of clemency to a prisoner on the basis of a deficiency which he himself supposes to exist in the accused or in his ancestors.

ROBERT H. GAULT.

THE COURTS AND THE DIVORCE LAWS.

The greatest failure of our courts is not in respect to the administration of the criminal law, but in respect to the administration of our divorce laws. Divorce is, to be sure, not a matter which lies strictly within the realm of criminal law, and so perhaps may be regarded by some as outside of the field of this JOURNAL. However, divorces are rarely granted

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in this country excepting upon allegation of misconduct on the part of one of the parties to the divorce suit which constitutes an infraction of the social order if not of the criminal law. Over ninety-four per cent of all the divorces granted in this country are granted on the grounds of adultery, wilful desertion, cruelty, habitual drunkenness, imprisonment for felony, or the neglect of the husband to provide for his family. All of these grounds constitute, or imply, infractions of the criminal codes of most of our states. Nevertheless, if we exclude imprisonment for felony, less than one per cent of all the cases in which such acts are alleged as grounds for divorce come before our criminal courts.

Moreover, the student of crime must be interested in divorce because of his interest in the family. A wholesome family life probably forms the best preventive of both juvenile and adult crime of which we have knowledge. On the other hand, a demoralized and unstable family life seems to be one of the most productive factors in crime. An investigation conducted by the writer in 1910 showed that out of 7,575 children in thirty-four state reform schools in the United States, 29.6 per cent came from families in which there had been either divorce or desertion; 35.03 per cent from families in which either father or mother were dead; and 38.05 per cent (including a number of cases which overlapped) from homes demoralized by drink, vice, or crime. Four juvenile courts, dealing with 4,278 children, also reported that 23.7 per cent of this number came from families in which father and mother were separated by desertion or divorce, while 27.8 per cent came from families in which one or both parents were dead. In St. Louis, in the year 1909, according to the juvenile court report for that year, out of 687 children under the care of the juvenile court, not less than 400 had not both their own parents living at home. These facts prove conclusively the close relation between desertion and divorce, on the one hand, and juvenile crime on the other.

Yet, as was said at the beginning, in no respect are our courts of law greater failures than in respect to this matter of administering divorce laws. While divorce laws may be shamefully lax in some of our states, the administration of them is even more lax. Collusion, for example, is supposed to constitute a bar to divorce in most of our states. Yet in a few cases carefully investigated by a judge in St. Louis, collusion was shown to exist in sixty per cent of the cases applying for divorce. Thus, the courts virtually encourage divorce by mutual consent, although no state has a law on its statute books permitting divorce by mutual consent. This charge is borne out very fully by the experience of Kansas City, Missouri. In 1911 Kansas City had one divorce to every three

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marriages, and for a number of years previous it had one divorce to every four or five marriages. Such a rate is not uncommon among the cities of the Central West, Rocky Mountain and Pacific Coast states. In 1912, however, Kansas City appointed a Divorce Proctor, Mr. W. W. Wright, who made it his business to investigate so far as possible every case applying for divorce in the courts of the city, to see that there was no collusion and that the offenses alleged in the petition for divorce actually existed. Although the divorce laws of the state of Missouri are very liberal, recognizing eleven grounds for absolute divorce, this simple precaution of carefully investigating every case that came before the courts by an officer of the court, reduced the number of divorces granted in Kansas City in 1912 twenty-eight per cent.

That our courts are now encouraging divorce with collusion or by mutual consent, could hardly be otherwise when we consider divorce procedure in the average court. It is very seldom that a court in one of our large cities in the West takes longer than fifteen or twenty minutes, on the average, to decide a suit for divorce. Many courts take very much less time than this. In a recent issue of the *Chicago Tribune* the conditions under which divorces are granted in the city of Chicago are well set forth. Says *The Tribune*: "The record of fifty divorces an hour repeats itself day after day. There is no time for inquiry, little opportunity for reconciliation, multitudinous chances for fraud. The court hears the story of the plaintiff, and the corroboration of one or possibly two other witnesses. A prima facie case is made out. The evidence is "written up." It comes back to the judge in due course of time and he has no choice under the law but to enter the judgment which the bill of complaint granted. The divorce courts make more orphans in Chicago than death. Judge Kavanagh said that an average of 175 persons die in Cook county every week. The divorce decrees granted in the same weekly period quadruple that number."

However, our courts are not all as lax as the above statements would seem to imply. Many judges are very careful about the matter of granting divorce, and insist that every case shall be carefully tried. This is shown by the fact that out of 1,302,000 applications for divorce in the United States, from 1887 to 1906 inclusive, only 945,000 were granted by our courts. Apparently about twenty-five per cent of all applications for divorce are refused. But this only serves to emphasize the failure of our divorce courts, as social agencies for dealing with the instability of the family; for it is scarcely probable that in the twenty-five per cent of cases in which divorce is refused there is any real reconstituting of the unity of the family life. Our courts must evidently be transformed to

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deal at all effectively with the instability of the family. The formal procedure of both the criminal and the civil court is as much out of place as "Police Court procedure" in dealing with a divorce case. The judge should have all the freedom which characterizes the juvenile court, and should feel that he is the representative of society in this weighty matter of severing family bonds. He should have one or more "divorce proc-

tors" at his disposal to carefully investigate every case that comes before the court, and to ascertain whether the interests of society will be served or not in dissolving a particular family group. If it be for the best interest of society that the family group should remain intact, then the judge should informally exercise his good offices, and even the power of the law, to effect a reconciliation.

These proposals are not impractical dreams, because they are already beginning to be carried out in some of our courts. They perhaps amount in effect to saying that in every city of any size there should be special Courts on Domestic Relations, before which should come in the first instance all cases applying for divorce. These courts should investigate the cases carefully to see if reconciliation can be effected, or if the interests of society demand that family bonds be severed. Only after all efforts to maintain the family life have failed should the cases finally go before the divorce courts for the formal decree of separation. The city of Chicago is to be congratulated upon being the first to establish an efficient Court on Domestic Relations; but it has not gone far enough until every application for divorce is brought primarily before this court.

CHARLES A. ELLWOOD.

STOPPATO ON JURY SERVICE.

Alexander Stoppato, of the University of Bologna, has written a most interesting and instructive article in the March-April number of *Il Progresso del Diritto Criminale*. This magazine, published in Rome, is dedicated to the promotion of practical reforms in criminal law by the application of true juridical theories. Stoppato's article deals with the reform of the present jury system in Italy. The system there differs in some respects from our own, but his observations are of interest to American readers because of the many complaints against existing systems in the several states. It is strange to discover that he would make the jury a more practical institution by giving it more power, whereas the American reformers think that it should be abolished, and in fact in many states a jury trial is merely demandable by the parties if they want it;

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otherwise their case is tried by a judge alone. In those states we may well observe that the retention of the jury as a right was due to constitutional provisions and not from any desire to retain it.

Stoppato thinks that the jury is not a political institution existing to counterbalance the institution of the judgeship in the way somewhat analogous to Montesquieu's tri-divided government, but he states that it serves a social duty, and that its true sphere lies in "declarations that show the development of the public conscience which determines the degree of criminality under changeable social conditions." In other words, as criminality is admitted by all philosophers of law to be relative, it is apparent that a jury chosen from the people is better adapted to determine what the exact existing state of criminality is than a judge whose life is given over to the study of statutes and precedents; that is, that a jury—to use a figure of speech—has its ear closer to the ground and can better weigh the morality or immorality of a crime. By this Stoppato does not mean to throw over the law of the statutes, but merely to hold that two elements should enter into a conviction for a crime; first, the consideration of whether the act is against a written law, and, secondly, the amount of unsocial mentality that entered into its commission, and that a jury is best fitted to consider the latter.

He holds that the fact that good results are not always obtained by the jury system does not reflect on the justice of the institution, but upon the rules that govern it. Many judges complain of it, and yet in the majority of cases substantial justice seems to be obtained and public opinion seems satisfied. To consider this without bias we must discard some convictions which are the result of a rigorous legal training, and conservative members of the legal profession must become less conservative. To-day, punishment for crime is no longer considered as a revenge, or entirely as a preventive; it is reformatory, and reformatory powers must be contingent and relative. Admitting that the jury is a better judge of the trend of life on the street, it should surely be allowed the control of the part of the criminal prosecution which deals with the circumstances under which the crime was committed. He thinks that jurors show stringency where there is a popular demand for it, and are lenient where the feeling is not so strong against the crime. This he thinks is evidence of the claim that the jury is the thermometer of the popular conscience, and he thinks that the popular conscience is the originator of criminality, and should be followed by the law.

Having thus outlined the general reasons for giving the jury more power, he takes up details of specific reform. The social conscience should of course be worthily represented. To obtain this end he thinks

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that the number of jurors could be lessened (to avoid an unwieldy body), and the right to challenge could be reduced to obtain juries more representative of the people at large. He thinks that—within certain bounds—juries should be no more challengable than judges. He has many doubts as to the maxim that the jury is the judge of the facts and that the judge is the judge of the law. He recognizes the difficulty of applying this statement and while he does not think that the jury should be the judge of the law without instruction, he thinks that the judge should explain what the law is, and ask a series of questions based on the law and the facts for determination by the jury, and that thus, under instruction the jury should find both the law and the facts. We may say that our experience with American juries does not lead us to embrace this proposition with any conviction of success, but in other countries, the different education and up-bringing of the citizens leads to the obtaining of juries of greater fitness. He proposes that the first question should be as to the existence of the fact alleged, the second as to its authorship, and the third as to the guilt of the defendant. The third question should be extended by a complete statement of the law and the defense applicable thereto.

He then takes up the right of the accused to refuse to give evidence. The practise here is so different from the American practise that we may well omit it, but his next problem is one of great interest. He thinks that the jury should be allowed to participate in the determination of the penalty; that the judge should tell them the maximum and minimum penalty, what circumstances may be taken in mitigation of the offense, and then each juror should be allowed a vote as to what penalty he thinks would be just. Theoretically, we deem that this would be ideal, and perhaps in France, where the juries in Somme, Garde, Saone and Loire, and elsewhere have demanded the right to participate in its determination, alleging that they could not reach the sense of guilt without knowledge of what results their action would have, this plan would have good practical results. In Italy, Stoppato confesses that no such demand has been made, but even there the interest of the people in prosecutions might justify it. It is well to remember that Italy at the present time is thoroughly alive to legal reforms, and is enjoying the existence of an active School of Legal Philosophy which we may go so far as to say leads present juridical thought. In America, however, the interest taken by the people, and consequently by the juries chosen from them, is not such as to give one confidence in their ability or willingness to pay sufficient attention for the correct determination of sentences by which criminal justice is upheld. In Switzerland a law allowing such a participation on the part

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of the jury has been passed, but again we must remember that Switzerland is a law unto itself because of its size, its geographical position, and its people.

In conclusion we may say that Stoppato's theory for the decreasing of the number of jurors, for allowing them to determine certain legal propositions under the instruction of the judge, and for allowing them to participate in the quantum of the penalty, and for the reduction in the number of challenges in order to make the jury more representative of the people at large, all seem to us to be theoretically correct, but as impracticable in America as they are theoretically desirable. If they are found promotive of the best interest of criminal justice in Italy we can only say once more that the smaller and homogenous countries have many advantages which our larger and heterogenous unit lacks.

JOHN LISLE.

CRIMINAL PROCEDURE IN SCOTLAND.^{55½}

EDWIN R. KEEDY,
Northwestern University.

TRIAL (SECOND DIET) ⁵⁶

Preliminary Matters.

The trial of the accused is either in the sheriff court or the High Court of Justiciary, depending upon the seriousness of the charge. The procedure in each court is practically the same.

In the High Court, if the accused fails to appear for trial, the prosecutor being present, sentence of fugitation or outlawry is passed against the accused. The effect of this sentence is thus stated by Hume: "He cannot bear testimony on any occasion or hold any place of trust, or even pursue or defend in any process, civil or criminal, or claim any personal privilege or benefit whatsoever of the law."⁵⁷ His personal property also escheats to the Crown. In the Monson case (1893) one of the accused persons, Scott, who failed to appear for trial, was outlawed.

^{55½} Concluded from January number.

⁵⁶ Following is a schedule of the proceedings prior to the trial, compiled by Messrs. Renton and Brown in their book on criminal procedure:

Monday, June 7—Petition and warrant to arrest issued.

Tuesday, June 8—Declaration (if desired by accused) and committal for further examination.

Wednesday, June 16—Committal for trial. (Should as a general rule be within eight days from declaration).

Monday, June 21—Case reported to Crown Office. (No fixed period for this, but should be as early as possible after committal for trial).

Monday, June 28—Indictment drafted by Crown Counsel.

Friday, July 2—Proof print sent to procurator-fiscal for revisal.

Monday, July 5—Proof print returned revised.

Friday, July 9—Warrant of citation issued by Clerk of Justiciary.

Monday, July 12—Indictment served. List of jury (not less than thirty) prepared under directions of Clerk of Justiciary. Indictment and documentary productions lodged with Sheriff Clerk of court of first diet.

Monday, July 19—First diet (six clear days after service). Any objections to relevancy, etc., to be stated and minute signed by Clerk stating that such objections sustained or repelled. Any special defense tendered and recorded. Plea of not guilty recorded and signed by Sheriff.

Friday, July 23—Last day (five clear days before trial) for notice to Crown Agent of challenge of previous convictions.

Saturday, July 24—Last day (four clear days before trial) for notice to Crown Agent of inability to find any person or witness mentioned in indictment. Last day (three clear days before trial, allowing for Sunday intervening) for notice to Crown Agent of witnesses and productions for defense. Copies of all written notices to be lodged with Clerk of Justiciary for use of court.

Thursday, July 29—Second diet. Trial.

⁵⁷ Vol. II, p. 270.

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When a case is called for trial in either court the accused may present, for the purpose of securing an adjournment, objections in respect of the misnomer or misdescription of any person named in the indictment or of any witness in the list of witnesses, provided he has given notice, four days before the trial, to the prosecutor of his inability to discover who such person named in the indictment is, or to find such witness, and has not been furnished by the prosecutor with such additional information as might enable him to ascertain who such person is, or to find such witness in sufficient time to precognosce him before the trial.⁵⁸ If either of these facts is shown the court will probably order an adjournment.

The High Court, when the trial is before that court, may review the proceedings at the first or pleading diet, and if it is shown that the accused pleaded guilty to an incompetent charge, or under circumstances which tended to prejudice him, the court may allow the plea to be withdrawn or modified and will grant an adjournment.⁵⁹ Sometimes the trial judge of his own initiative will point out a defect in the indictment.⁶⁰

If the prosecutor is not prepared for trial, because a material witness is absent or for some other reason, he may at any time before the jury is sworn to move to desert the diet *pro loco et tempore*. The granting of this motion is in the discretion of the court. If granted, a later date is set for the trial.

If the accused pleaded not guilty at the first diet he may change this at the trial to guilty. An entry to this effect is made in the record, and signed by the accused and the judge.

Impanelling the Jury.

The jury is composed of fifteen jurors, five special and ten common. The names of those who have been summoned for jury service are placed in two glass jars, one for the special, the other for the common jurors. The clerk draws at random the names from the two jars. If a juror when called fails to answer, he is fined by the court. A person qualified as a juror seldom attempts to escape jury service. About the only excuse that is accepted is illness, and a medical certificate is required.

The prosecutor and the accused may each peremptorily challenge five jurors, not more than two of whom are special jurors. The challenge

⁵⁸Crim. Procd. (Scotland) Act, 1887 (50 and 51 Vict. c. 35), s. 53.

⁵⁹Crim. Procd. (Scotland) Act, 1887 (50 and 51 Vict. c. 35), s. 41.

⁶⁰See Coutts, 1899, 3 Adam 50.

must be made when the juror is drawn. Each party has an unlimited number of challenges for cause. It is, however, very unusual for the prosecutor to challenge a juror. There is no *voir dire* examination. If the challenge is based upon the lack of sufficient qualification, this can be proved only by the oath of the juror objected to. Challenges of both kinds are very rare. The writer observed a challenge in but one case, when two jurors were peremptorily challenged by the defense. The juries in all cases seemed to be composed of intelligent men, impressed with the seriousness of their position.

After the jury is selected the clerk reads to them the charge against the prisoner, omitting any reference to previous convictions. The jury is then sworn as follows: "You fifteen swear by Almighty God, and as you shall answer to God at the great Day of Judgment, that you will truth say and no truth conceal, in so far as you are to pass on this asize." This oath is a survival from the time when the jury based their verdict upon their own knowledge of the facts.⁶¹ After the jury is sworn no adjournment can be granted. The last step before the examination of witnesses is the reading to the jury of any special defenses, notice of which has been given.

Examination of Witnesses.

One of the characteristic features of Scottish procedure is the absence of an address to the jury by the prosecutor before evidence is introduced. The Lord Justice Clerk (Kingsburgh) in the Monson trial spoke of this as a humane provision. The judge and jury obtain their first knowledge of the case against the accused from the testimony of the witnesses for, in addition to the above fact, there has been, as already stated, no preliminary public examination for the newspapers to report. No witnesses are examined on oath till the trial.

The oath, which is administered to the witness by the judge, is as follows: "I swear by Almighty God, as I shall answer to God, that I will tell the truth, the whole truth and nothing but the truth." Young children are not sworn; the judge simply tells them to speak the truth. With the exception of medical witnesses, who are to give opinion evidence, all the witnesses in a case except the one under examination are compelled to leave the court.

The examination of the witnesses is based upon their precognitions. If the trial is in the sheriff court, the procurator-fiscal, who prosecutes,

⁶¹"Assizers may in our Law judge according to their privat knowledge; without Lawful probation, which seems dangerous in Criminal cases." Mackenzie, p. 249.

CRIMINAL PROCEDURE IN SCOTLAND

has previously examined the witnesses privately and obtained their precognitions (statements by the witnesses of their knowledge of the facts). In the High Court the advocate-depute has the precognitions, which are sent to him by the local procurator-fiscal. In important cases the advocate-depute generally consults with the witnesses for the Crown before the trial.

It is a general rule in Scotland that an accused person shall not be convicted on the testimony of a single witness, no matter how credible. There must be also the testimony of a second witness or the testimony of the one must be corroborated by other facts or circumstances. Hume gives this example: "If one man swear that he saw the pannel stab the deceased, and others confirm his testimony with circumstances, such as the pannel's sudden flight from the spot, the blood on his clothes, the bloody instrument found in his possession, his confession on being taken or the like; certainly these are as good, nay better even than a second testimony to the act of stabbing."⁶² In cases of circumstantial evidence it is not necessary that each point in the prosecution's case be proved by two witnesses. It is sufficient if a complete chain of evidence is established. All the evidence for the prosecution must be introduced before the defense calls its witnesses. After a witness for the prosecution has been cross-examined by the defense, he may then be re-examined by the prosecutor.

The prosecutor in examining witnesses is closely supervised by the court. If an improper question is asked, the court without objection made by the other side, may order the question withdrawn. Sometimes, counsel will agree in advance that certain questions, which might otherwise be objected to, shall be asked. In one case, observed by the writer, where the accused was charged with ten different acts of fire-raising, the advocate-depute before the trial said to counsel for the defense that if there was no objection he would ask his witnesses leading questions as to the facts of the burning. Counsel for the defense said he did not object, as he did not deny that the fires had occurred. As a result of this agreement the advocate-depute examined each of the persons whose property had been destroyed somewhat as follows: "Your name is John Baird, and you are a farmer in parish. On the night of March 31st you retired about nine o'clock and an hour later were awakened by a cry of fire. You saw your barn was afire and you made efforts to extinguish the blaze, but were unsuccessful and the barn with the contents was totally

⁶²Vol. II, p. 384.

destroyed, the loss being 100 pounds, covered by insurance." To this the witness replied, "yes." Ten witnesses were in this way examined as to the facts of each fire in about an hour. When it came to the question as to whether the fires had been started by the accused the advocate-depute asked direct questions of his witnesses.

As already stated, the prosecuting counsel is not permitted to examine any witness, not included in the list furnished to the accused. In a case in 1883 the sheriff before whom the case was being tried, after the close of the evidence on both sides, called and examined a witness not on the list. On appeal this was held improper.⁶⁸

When a witness for the prosecution is being examined, it is not competent to ask him what he said in his precognition, nor can this be brought out on cross-examination, since the witness was not under oath when precognosced. Each side is entitled to precognosce the other's witnesses before the trial. This is possible because each is furnished with a list of the witnesses on the other side.

When the last witness for the prosecution has been examined, the declaration of the accused made before the examining magistrate may be introduced by the prosecutor. This is evidence against the accused but not in his favor. He can not have it read if the prosecutor objects. The declaration in most cases is unimportant as evidence, since the accused under the present practice generally does not make a declaration, unless it can be favorable to himself.

After the evidence for the prosecution is closed, counsel for the defense, without addressing the jury, calls his witnesses. In accordance with the Criminal Evidence Act of 1898, which applies both to England and Scotland, the accused person may take the stand in his own defense. There was much opposition in Scotland to the passage of this act in so far as it applied to that country. It was contended that the proposal was contrary to the principle that the prosecution must prove its case beyond a reasonable doubt, and that it would work hardship to the accused, particularly if innocent, since he would be subject to cross-examination if he testified, and the jury would as a practical matter draw a presumption of guilt if he failed to testify. In practice an accused person seldom takes the stand, and neither the judge nor the prosecutor may comment on this. If the accused does take the stand and presents a defense, which he has not disclosed in his declaration to the examining magistrate, this fact may be commented upon by the judge for the purpose of affecting his credibility as a witness.

⁶⁸Wynn, 1883, 5 Coup. 370.

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During the examination of the witnesses the judge takes full notes of their testimony. Several of the judges, by using shorthand, take down the evidence verbatim. These notes are used by the judge in summing up the evidence to the jury. The judge takes a very active part in the examination of witnesses. He not only controls counsel in their examinations, but also puts questions to the witnesses, and sometimes explains to the jury the answer of a witness. At times the judge will stop the examination of a witness by counsel and will conduct it himself. He is more likely to do this if the witness is a child. The judge always requires that counsel shall ask nothing but relevant and important questions, often demanding that counsel explain what he expects to bring out by a particular line of questioning. In several cases observed by the writer the judge asked the prosecuting counsel what he expected to prove by a certain witness, and on being told, called the opposing counsel to his desk and asked him if he intended to deny the truth of this. If counsel said no, the judge then said that there was no need to examine the witness further on this point, as he would instruct the jury that the matter was proved. In one case where the counsel for the Crown was examining a witness as to a certain matter, the judge told him not to proceed, unless he could prove by further witnesses a certain other matter, which was essential in order to make the first point of probative value. After a witness has been examined he cannot be recalled by either side without the permission of the judge, but not infrequently the judge will have a witness recalled in order that he may examine him further. The trial of a criminal case in Scotland is not a contest between opposing counsel, with the judge as referee, but an investigation, conducted in a simple and direct manner, into the truth of the facts material to the case. All the officials are very serious, and there is no levity such as is rather frequent in an English trial.

The jurors may take notes of the evidence and may ask questions of the witnesses. They are, however, generally instructed by the judge to postpone their questions till counsel completed his examination. In the *Monson* case the Lord Justice-Clerk instructed the jury not to discuss the evidence with each other until the end of the case.

If, at any time during the examination of the witnesses, the prosecutor sees that the charge against the accused cannot be established, he may, with the permission of the judge, withdraw the charge. In such a case the jury returns a formal verdict of not guilty.

At the close of the evidence for the defense both counsel may address the jury. Counsel for the defense has the last speech. This privilege,

along with the absence of a preliminary address to the jury by the prosecutor, is very advantageous to the accused.

The Judge's Charge to the Jury.

After both counsel have addressed the jury the judge charges the jury, both summing up the evidence and declaring the law applicable to the case. The function of the judge in charging the jury is well stated by the Lord Justice-Clerk in the Monson case:

"The purpose of such a charge as this is twofold. It is, in the first place, that the case may be, as it were, summed up to you from a legal point of view, so that you may understand the aspects of it, and how you ought to look at it; and, in the second place, that those features of it may be brought before you which are worthy of your consideration in a more unbiased and collected form than they can be in two controversial speeches addressed to the jury from the one side and the other. For, of course, it being the duty of a public prosecutor to state all that he can against the prisoner, he does so with the utmost of his ability. On the other hand, the counsel for the defense states his case with the utmost of his ability in the opposite direction; and it is not an unreasonable thing that at the conclusion of the case some words should be addressed to the jury from a more judicial and impartial point of view. I may tell you further that it is the practice of a judge to suggest to the jury things which occur to his own mind upon the evidence, and I shall certainly do so in the course of my observations; but I do it with this remark to you, that what I have to say as matter of observation is said not to dictate to you, but solely for your personal consideration. * * * One other thing the judge has to do, and that is to guide you in the matter of law, to guide you as to how the case must be looked at with respect to the way in which it has been presented by the Crown; and, of course, the law you will accept from me as solely responsible in that department."⁶⁴

The judge in his charge generally resolves the case into the different questions involved and then lines up on both sides the evidence relative to each question.

The judge may express his opinion of a witness' credibility. In one case where the accused testified, the judge said to the jury that it was for them to decide whether they believed this testimony but that he would not be fair to them if he did not say that he himself was doubtful. In the same case, where there was a conflict between the testimony of

⁶⁴J. W. More, *The Trial of A. J. Monson*, p. 438.

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the accused and that of one of the prosecution's witnesses, the judge said it was for the jury to decide which one told the truth, but for himself he thought the witness for the prosecution was an excellent witness.

When an indictment is so drawn as to charge alternate offenses the judge may instruct the jury that the evidence will not justify conviction of one charge, and that their attention should be directed entirely to the other.

Verdict.

When the judge has charged the jury, they elect a chancellor, corresponding to our foreman. The jury may return their verdict at once, or if they wish, they may retire for deliberation.

There are three forms of verdicts—*guilty, not guilty* and *not proven*. Originally there were but two verdicts in Scotland, the forms being *fylit, culpable* or *convict*, and *clean* or *free*. These were the equivalent of guilty and not guilty. Towards the end of the 17th century a practice arose whereby the jury was confined simply to finding whether certain facts presented to them by the court were proved, the court determining the final question of guilt. The jury then returned a special verdict or found that the facts as presented to them by the court were proved or not proved. In this way the verdict of not proven arose, and continued the only form of acquittal till 1728 when the jury asserted their ancient privilege of bringing in a general verdict of not guilty. The verdict of not proven, however, continued in use. The effect of this verdict and its relation to not guilty will be discussed later.

A verdict may be reached by a majority vote. Each juror registers his personal view based upon the evidence, and there is seldom any effort by one juror to influence another. When a verdict of guilty is returned the chancellor states whether it is unanimous or by a majority, without indicating the exact vote. In one case where a majority verdict was returned, the judge asked the chancellor how the vote stood. The reply was 9 to 6 for conviction. The judge then said he would take the small majority into consideration in determining the sentence. This is an unusual practice. Ordinarily the judge does not know the vote, and even if it is known it does not affect the sentence. In most of the cases observed by the writer, where the accused was convicted, the verdict was unanimous. In two cases it was 9 to 6, and in several others it was 14 to 1. If the majority vote is in favor of the accused he need not stand another trial as in this country and in England, but is acquitted and discharged.

The majority verdict seems to work satisfactorily in Scotland, and

no opposition to it was encountered. The Lord Justice-Clerk when Lord Advocate in speaking of the majority verdict before the House of Commons said: "My experience which has now extended over a number of years, is that in capital cases it is barely possible, and I have never known an instance, for a man to be convicted by a bare majority. If the verdict of the jury in such a case should be eight to seven, I am perfectly satisfied that the sentence would not be carried into effect."⁶⁵ Dr. Cameron of Glasgow said on the same occasion: "We have in Scotland no necessity for unanimous verdicts. The existing Scottish system has worked so long and so well, that I cannot see what practical purpose is to be attained by changing it."⁶⁶

In discussing the majority verdict with the Lord Justice-Clerk the writer suggested that the chief argument in this country against less than a unanimous verdict is the requirement whereby the prosecution must prove its case beyond a reasonable doubt, the vote of several jurors against conviction amounting to such doubt. The reply to this was that there is the same element of doubt in a case where it requires many hours for the jury to reach an agreement.

The majority verdict, of course, results in expedition. The deliberations of the jury are short, and no second trial can be required. Nor can there be a miscarriage of justice because of a stubborn or prejudiced juror. The majority verdict is in part responsible for the fact that jurors are seldom challenged.

The verdict of *not proven* is clearly anomalous and illogical, because the legal effect of this verdict is the same as not guilty. The accused cannot be tried again because he has "tholed his assize" (been in jeopardy). He is, however, stigmatized in the popular mind because the jury by their verdict have indicated that he is under suspicion, though his guilt cannot be established. Hume says: "Not uncommonly, the phrase *not proven* has been employed to mark a deficiency only of lawful evidence to convict the pannel; and that of *not guilty*, to convey the jury's opinion of his innocence of the charge."⁶⁷ This distinction is opposed to the principle that the guilt of the accused must be proved by the prosecution beyond a reasonable doubt, because it puts on the accused the burden of proving his innocence. In one case, observed by the writer, where the defense called no witnesses, counsel for the defense, in addressing the jury asked for a verdict of not proven. He said he could not ask for not guilty, as he had produced no witnesses to

⁶⁵316 Hansard, 1399.

⁶⁶316 Hansard, 1400.

⁶⁷Vol. II, p. 440.

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prove the innocence of the accused. In practice it would seem that not proven is often a compromise verdict. One of the High Court judges, writing in 1906, said: "The verdict would seem to be used by juries in order to relieve their consciences or preserve their self-respect, or perhaps as a convenient basis for compromise. They will not find a prisoner guilty, and they will not find not guilty; they will acquit him no doubt, but they place indelibly on record their view that in their opinion the innocence of the accused is extremely doubtful."⁶⁸

In a case on circuit in June, 1912, the judge in charging the jury told them they might find the accused guilty or not guilty, and then added: "There remains, gentlemen, that last refuge of perplexed jurors, a verdict of not proven, against which I have a very strong opinion." It is needless to state that the jury did not return this verdict. Another of the High Court judges stated to the writer that he was strongly opposed to the not proven verdict. He said that a jury should be told a verdict of not guilty does not involve their personal belief in the innocence of the accused, but simply that the prosecution has not proved its case. There is general dissatisfaction with this verdict, but it is frequently returned. According to the judicial statistics for 1910, not proven was returned in more cases than not guilty.

Under the act of 1887 the jury may convict the accused of certain offenses not charged in the indictment. For instance, under an indictment for robbery, or for theft, or for breach of trust and embezzlement, or for falsehood, fraud and wilful imposition, the accused may be convicted of reset⁶⁹ (receiving stolen property), and under an indictment charging attempt, the accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the crime said to have been attempted.⁷⁰

The court has no power to interfere with or set aside the verdict of the jury, even though such verdict is contrary to the evidence.⁷¹

Sentence.

If a verdict of guilty is returned, the prosecutor moves for sentence. The court has no power to impose sentence without this motion, for the case still remains in the control of the prosecution, as representing

⁶⁸Lord Moncrieff in *Blackwood's Magazine*, 1906, p. 763.

⁶⁹Crim. Proced. (Scotland) Act, 1887 (50 and 51 Vict. c. 35), s. 59.

⁷⁰Sec. 61.

⁷¹"So that though they find *guilty* without any evidence, or *not guilty* against all evidence, nay though they find a verdict against their own knowledge both of the fact and the law; yet still, as their decision, is must and will stand unquestioned with the Court." Hume, Vol. II, p. 440.

the Lord Advocate. The prosecutor in moving for sentence may suggest the degree of punishment which he thinks the convicted person deserves. The judge is supplied with a list of any previous convictions and also with a list of the sentences imposed by other judges for similar offenses. The latter is for the purpose of securing uniformity of sentence. The judge may also examine witnesses as to the character of the convicted person.

When a sentence of death is imposed, the condemned person's movables are forfeited to the Crown.

APPEAL.

Sheriff Court. The proceedings on indictment in the sheriff court are subject to a qualified review by the High Court. There are two methods for such review—*advocation* and *suspension*.

Advocation, which is employed by the prosecutor only, is the method of bringing before the High Court for review the judgment of the sheriff in dismissing an indictment. The proceeding is started by presenting to the High Court a bill of advocacy, asking that court to recall the judgment of the sheriff, and to order him to proceed with the trial on the indictment. A single judge may pass the bill, but it requires a quorum of the court to decide whether the prayer of the bill shall be granted.

Suspension, which is available to the defense only, is the method for setting aside an improper warrant, or a defective judgment by the sheriff. It is commonly used where an indictment has wrongly been held competent, and the accused has been convicted, where the sheriff admitted improper evidence, or where the verdict does not correspond with the indictment. There can be no review on the merits of the case, nor on facts proved at the trial. The proceeding is started by a bill to the High Court as in the case of advocacy. When the bill is presented the judge may order the accused to be liberated on bail. On the hearing of the bill the High Court has power—

(a) "To pass the bill and suspend the sentence *simpliciter*, and to order repayment of any fine, penalty, or expenses paid in terms of it; or

(b) "To repel the reasons of suspension, refuse the bill, and recommit the suspender to prison if necessary; or

(c) "To amend the conviction and sentence, and to remit to the inferior judge, when necessary, with instructions."⁷²

High Court. There is no appeal of any kind from the judgment or sentence of a judge of the High Court in criminal cases. As all serious

⁷²Renton and Brown, Criminal Procedure, 299.

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offenses are triable only in this court, it results that persons receiving heavy sentences have no privilege of review. It was at one time the practice for a single judge of the High Court to refer questions of law arising in criminal cases to the full court, but this has not occurred since the passage of the act of 1887. The only relief for a wrongfully convicted person is through the Secretary for Scotland, who on behalf of the King exercises the pardoning power.

There is great difference of opinion in Scotland regarding the necessity for an appeal from the High Court. Even the judges of that court are not in agreement. One of these judges, who has been connected in different capacities with the administration of the criminal law since 1888, said he knew of no wrong conviction in all that time. On the other hand another judge in an address delivered in 1905, said: "The first and perhaps the most serious limitation of the jurisdiction of the Justiciary Appeal Court is that it can not control or review in any way the actings of any of its members sitting as single Judges. * * * He may, with perfect impunity, disregard the views of other Justiciary Judges; he may even disregard the law that has been laid down by a full Bench, or what is more probable, may avoid the appearance of doing so by misapplying it. None of the cases I have figured are at all fanciful. I could give instances of their having occurred in my own limited criminal practice."⁷³ A third judge said that in his opinion no appeal is necessary, as the Secretary for Scotland takes care of all cases of injustice. A contrary view is contained in an editorial published in the *Juridical Review* in 1889: "Little can be said for the appeal to the clemency of the Crown, except when seeking mitigation of sentence only. It is absurd and arbitrary. To pardon a convict for the crime which he did not commit, because he did not commit it, is neither reason nor redress. A political partisan, overburdened with his proper official work, is the judge. He conducts his examination by methods exactly opposite to those regulating the normal administration of justice. No publicity, no evidence on oath, no argument, but petitions, letters, untested theories of experts, perhaps electioneering considerations, out of which somehow emerges the haphazard decision to pardon."⁷⁴ Another writer in the same magazine says: "Another, and to many minds the most serious objection to the present system lies in the fact that it is spasmodic and irregular. For one thing, it is confined for the most part, to sentences of death and of penal servitude for long terms of years. There is a

⁷³Lord Salvesen, *The Justiciary Appeal Court, Its Anomalies and Limitations*, 17 *Juridical Review*, 332, 334.

⁷⁴1 *Juridical Review*, 385.

danger, too, of its being confined to the two or three sensational or picturesque cases which lay hold of the popular mind, and which on that very account are least likely to require attention."⁷⁵

A writer in the *Juridical Review* in 1907 makes a strong argument for allowing appeals from the High Court. He says: "Do the juries who try High Court cases possess greater intelligence and experience in weighing evidence than the juries who are impanelled in the inferior courts? Are the judges of the High Court of Justiciary, who are also the judges of the Court of Session, liable to error when sitting in civil cases, and infallible when trying criminal cases?"⁷⁶ This argument is also applicable to cases tried in the sheriff court, for as already noted, there can be no review based upon the improper charge of the sheriff to the jury, or upon the merits of the case as determined by the verdict.

The establishment of a court of criminal appeal in England in 1907 caused considerable agitation for a similar court in Scotland. This agitation has been recently strengthened by the publication of Sir Arthur Conan Doyle's book dealing with the Oscar Slater case in 1904. Slater was convicted of murder on circumstantial evidence, which by some was considered inadequate, and was sentenced to death, but this was commuted to penal servitude for life. A writer in the *Scottish Law Review* for October, 1912, referring to this case, condemns the lack of appeal.

SUMMARY PROCEDURE.

The procedure in cases before an inferior judge, where there is no jury and where the proceedings are instituted by a complaint at the instance of the local prosecutor instead of an indictment in the name of the Lord Advocate as in solemn procedure, is regulated entirely by the act of 1908,⁷⁷ which repealed a number of other acts passed at different times and covering certain phases of the subject. Under these acts the procedure was highly technical and the results correspondingly unsatisfactory. The situation before 1908 was thus described by Lord Advocate Shaw before the House of Commons: "There has arisen in the course of years in Scotland a body of legal decisions on points of legal technique, the result of which has been to put a premium upon the ingenuity of the finder of flaws, and a real obstacle in the way of administration of justice by Summary Courts with any sense of security. The instances are numerous and one of them, which is at hand, I may cite. A prisoner

⁷⁵A. D. Blacklock, *A Court of Criminal Appeal for Scotland*, 4 *Juridical Review*, 150, 161.

⁷⁶A. J. L. Laing in 19 *Juridical Review*, 390.

⁷⁷Summary Jurisdiction (Scotland) Act, (8 Edw. VII, c. 65).

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was convicted of two separate offenses—a somewhat brutal assault and also a breach of the peace. He pleaded guilty to both, but because the clerk entered the conviction as of a ‘crime’ instead of the plural ‘crimes’ the court held that the conviction was bad, and the man, a criminal on two counts by his own confession, was on account of this slip sent home to his friends and his relations; a slip of grammar or the pen had let him loose upon society.”⁷⁸ The act of 1908 by providing for the amendment of the complaint and for the correction of errors in the record, and by specifying the grounds and method of appeal has prevented the miscarriage of justice through technical objections.

It is not the purpose of the writer to present all the details of summary procedure, as these can be found by referring to the statute, but certain features may well be mentioned.

Summary proceedings are instituted by a complaint and are usually conducted by the public prosecutor. The statute provides, however, for prosecution by a private party, in which case any law agent may appear and conduct the prosecution.⁷⁹ Complaints at the instance of private prosecutors for offenses where imprisonment without the option of a fine may be imposed require the concurrence of the public prosecutor.

The accused is usually brought into court by a summons, though the judge has the power to issue a warrant for arrest when he deems this expedient. Where a person has been arrested for an offense which may be tried before any court of summary jurisdiction except the sheriff court the chief constable or other officer in charge of the police station may liberate the accused person till his trial upon receiving a deposit of cash or any article of the same value. If the accused does not appear for trial the pledge is forfeited. The magistrate may then issue a warrant for his apprehension, but in the police courts this is seldom done. It is a common practice for persons in the cities charged with minor offenses not to appear when their case is called and thus to allow their bail pledge to be forfeited. They accomplish this advantage, that a conviction cannot be recorded against them. As the deposit required is generally not much in excess of the fine that would be imposed upon conviction, there is a strong incentive not to appear for trial. In Glasgow, for instance, the usual deposit required in cases of drunkenness is 7s. 6d.⁸⁰

When the case is called against the accused he may state any objections to the complaint, and no such objections can be made at a later

⁷⁸192 Parliamentary Debates (4th series), 101.

⁷⁹Sec. 18.

⁸⁰See testimony of Mr. Stevenson, chief constable of Glasgow, before the Royal Police Commission, 1907, p. 913.

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time, except with leave of court on cause shown.⁸¹ The court has power to amend the complaint at any time before the final determination of the case in accordance with the section of the statute noted on page 23 of this report. A large percentage of the persons charged with offenses in the courts of summary jurisdiction plead guilty.

After conviction or plea of guilty any judge of summary jurisdiction, except the sheriff, is given power to punish as follows:

(1) To award imprisonment with or without hard labour for any period not exceeding sixty days;

(2) To impose a fine not exceeding ten pounds;

(3) To ordain the accused (in lieu of or in addition to the said imprisonment or fine) to find caution for good behaviour for any period not exceeding six months and to an amount not exceeding twenty pounds;

(4) Failing payment of the said fine or on failure to find the said caution, to award imprisonment according to this scale: When the amount adjudged to be paid or for which caution is to be found does not exceed 5s, the period of imprisonment shall not exceed 5 days.

Exceeds—

5s, but does not exceed 1 pound.....	Imprisonment 10 days
1 pound, but does not exceed 3 pounds.....	Imprisonment 20 days
3 pounds, but does not exceed 5 pounds.....	Imprisonment 30 days
5 pounds, but does not exceed 20 pounds...	Imprisonment 60 days
20 pounds	Imprisonment 3 months. ⁸²

He may also dismiss with an admonition. This is usually done in the case of first offenders. In sentencing, the magistrate often takes into consideration whether the guilty person has been in custody or liberated on bail.

The act of 1908 provides that where any person has been convicted and imprisoned as a result of any proceeding or judgment of a prosecutor or magistrate, which is malicious and without probable cause, and such proceeding or judgment has been quashed, the person injured thereby may bring an action for damages against the offending official.⁸³

APPEAL IN SUMMARY CASES.

The method of review in summary cases provided by the act of 1908 is the stating of a case by the magistrate for the opinion of the High Court. Only questions of law can be reviewed, and either side may

⁸¹Sec. 29.

⁸²Secs. 7 and 48.

⁸³Sec. 59.

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have a case stated.⁸⁴ The practice is for the clerk of the court, upon application made by the appellant, to prepare a draft of the case, setting forth the facts that have been proved, and the questions of law to be reviewed. A copy of this draft is then sent to each side and upon their agreement on the terms of the case, it is presented to the magistrate for his approval.⁸⁵ The stated case, along with a copy of the proceedings of the case, is then filed with the clerk of the High Court. The stated case should not contain a recital of the evidence, but should consist of a statement of the facts, which the magistrate has found to be proved. This involves the opinion of the magistrate as to the credibility of the witnesses. The stated case is unsatisfactory as a basis of appeal if insufficient or not clearly stated. The case is argued before the court, which may affirm, reverse, or amend the judgment of the inferior court.⁸⁶

Where a case has been tried before the justices of the peace sitting at petty sessions there may be an appeal to the quarter sessions by either side on questions of law or fact. Since the act of 1908 most appeals from the justices on questions of law have been brought to the High Court by stated case.

GENERAL CONCLUSION.

The test of any system of criminal procedure is whether it produces satisfactory results, and inspires public confidence. The Scottish people have a very high opinion of their system and believe that on the whole it works satisfactorily. In speaking before the House of Commons in 1887 Dr. Cameron of Glasgow said: "He was as strongly impressed as any one could be with the general superiority of the principles on which the criminal law was administered in Scotland over those in England."⁸⁷ The Lord Justice-Clerk in 1898 wrote: "But the important thing in favour of the procedure is that it gives complete satisfaction to the public mind in Scotland, and results in as large a percentage of convictions as in any other part of the kingdom, if indeed it be not larger, while there is no substantial complaint of any kind either from the watchful citizen, who is ever ready to detect the executive in error, or from persons brought

⁸⁴Sec. 60. It is provided by section 75 that "no conviction, sentence, judgment, order of court, or other proceeding whatsoever under this Act shall be quashed for want of form, or, where the accused was represented by a law agent, shall be suspended or set aside in respect of any objections to the relevancy of the complaint, or to the want of specification therein, or to the competency or admission or rejection of evidence at the trial in the inferior court, unless such objections shall have been timeously stated at such trial by the law agent of the accused."

⁸⁵Sec. 65.

⁸⁶Sec. 72.

⁸⁷316 Hansard, 1371.

to trial and their friends. After a long experience of criminal procedure in the case of serious crime in Scotland, I feel sure it may be said with truth that the public mind is at rest as regards the justice of what is done, and that those who are dealt with have no feeling that they have not been treated with a due regard to their rights to fair trial."⁸⁸ Another writer stated in 1901: "Our Scottish system of detection and prosecution is rapid and effective, giving little trouble to the individuals injured, and reasonably fair to the accused. There is no country where there are fewer unnecessary prosecutions, less hardship and vexation in the detection of crime, more guilty persons convicted, and fewer innocent persons condemned."⁸⁹

Satisfactory results in the administration of the criminal law are not due alone to the system of procedure. General social and economic conditions must also be considered. In Scotland the problem of administration is not difficult. The country is in a well settled condition, and the number of commercial and industrial offenses, which always test a system of procedure hardest, are comparatively small. The great majority of the offenses are due to intemperance and do not involve difficult points of law. Apart from the character of the cases to be dealt with and the condition of the country the success of a system of procedure depends perhaps more upon its administration than upon the form of the system itself. The character and ability of the officials and their freedom from improper influences are determining factors. Freedom from influence is often a matter of development and such has been the case in Scotland. Up to the year 1734 Scottish judges were permitted to hold seats in Parliament. A Scottish historian, writing of conditions about the middle of the eighteenth century, says: "The authority of the bench was weakened not only by political bias, but by its close connection with, and its subserviency to, the landed aristocracy. * * * Their skill and dexterity as exponents of the law were much more frequently shown in finding specious theories to defend the opinion to which they were pledged than in steering a straight course to the goal of absolute justice."⁹⁰ Today the Scottish judge occupies an independent position, free from political and social influence.

In the case of the prosecuting officials the development has been away from political and other influences. Until recently some of the procurators-fiscal did not devote all of their time to their positions, but

⁸⁸J. H. A. Macdonald, *Prisoners as Witnesses*, 10 *Juridical Review*, 129, 134.

⁸⁹Chas. J. Guthrie (now Lord Guthrie) in 13 *Juridical Review*, 133, 144.

⁹⁰Sir Henry Craik, *A Century of Scottish History*, 245.

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also acted as the law agents of landed proprietors.⁹¹ Their appointment was formerly a political one, but the present Lord Advocate recently announced in the House of Commons his intention of filling vacancies by promoting those of lower rank. The appointments of the Lord Advocate and the advocates-depute still depend in part upon party affiliation, and they go out of office upon the defeat of their party. The Lord Advocate is always a member of Parliament, and the advocates-depute may hold seats there. There is at present some agitation for the permanent appointment of the advocates-depute, and for depriving them of the right to participate in political matters.

The only points of procedure to which there seems to be any opposition are the verdict of "not proven" and the lack of an appeal from the High Court.

The question now arises whether the Scottish system as a whole can be recommended for adoption in this country. To this the answer is no. This system developed to fit the local conditions,⁹² and must be considered along with the manner of its administration. One of the members of the German commission that investigated the criminal procedure of England and Scotland in 1907 said in his report: "Certainly we should not copy Great Britain, for very few of its institutions are directly transferable."⁹³

Is there any particular point of Scottish procedure that could be adopted to advantage in this country? This is a difficult question to answer, for each feature of a system is related to all the others. In most countries criminal procedure has developed by various readjustments of the balance between the provisions favorable to the prosecution and those favorable to the accused. If at a particular time the public, often influenced by the outcome of a sensational case, comes to feel that either side has too great an advantage, a change is made in the procedure to off-

⁹¹Dr. Cameron of Glasgow before the House of Commons in 1887, 316 Hansard, 1372.

⁹²"The truth seems to be, that there are in every case very great obstacles to the transferring of the Criminal Law of any one nation to another. Because, in any country, the frame and character of this part of its laws has always a much closer dependence on the peculiar circumstances of the people than the detail of its customs and regulations in most of the ordinary affairs of civil life. * * * The law respecting crimes has a near relation to the distinctions of rank among the people, the functions of their magistrates, their institutions and national objects, their manners and habits, their religion, their state of government and their position with respect to other powers." Hume, Commentaries, Vol. I, p. 16.

⁹³Dr. W. Mannhardt, "Aus dem Englischen und Schottischen Rechtsleben, 55."

set this advantage by inserting a provision favorable to the other side. For instance, the granting of appeal in England was largely due to the popular feeling aroused by the notorious Beck case. Most of the changes made in the procedure in England and Scotland have been favorable to the accused.

In this country the feeling now is that the accused has too great an advantage, and various suggestions are being made to remedy this. One of these is that less than a unanimous verdict be required for conviction, a two-thirds or three-fourths verdict being advocated. Whether an intermediate position between a majority and a unanimous verdict is advantageous must be carefully considered. The selection of any fraction over a majority would seem to be largely arbitrary. Undoubtedly any reduction from the present requirement would lessen the number of "hung juries," and is therefore desirable, provided no injustice thereby results to the accused. On this point the experience in Scotland would seem to be of some help, for very few, if any, cases of injustice can be traced to the majority verdict. It must, however, be remembered that in Scotland throughout the various stages of procedure prior to the verdict, the accused has many advantages, in that no witnesses except those contained in the list furnished to him before the trial can be called, that counsel for the prosecution does not address the jury before introducing evidence, and that counsel for the defense has the last speech to the jury. In addition to this the prosecutor is not strongly partisan in presenting his case. In this country, however, the accused has the benefit of the *voir dire* examination, whereby he may examine the veniremen as to their feelings and prejudices, and exclude from the jury any who are unfavorably disposed toward him. In one respect a fractional verdict would result in no practical change from the present situation, since verdicts of guilty are sometimes returned where on the original vote the jurors were not unanimous for conviction. On the whole it would seem that a fractional verdict would not be unjust to the accused, and would result in the conviction of some guilty persons who would otherwise escape through disagreement. If, however, the accused is to be convicted on a fractional vote, he should be acquitted if the vote is to the same extent in his favor.

One of the most unsatisfactory features in connection with the administration of the criminal law in many states of this country is the reversal of judgments of conviction because of slight and immaterial defects in the indictment. There are two reasons for this situation. One is the archaic and highly technical form of indictment that is required in many of our states. The other is the lack of power on the part of the trial judge to allow amendment of the indictment. In both these re-

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spects a lesson can be learned from Scotland. There the indictment is simple and direct and no words of art are required. In addition to this it is provided that objections to the indictment must be made before the trial of the facts, and the judges have liberal power of amendment. A statute such as that noted on page 23 of this report would remedy the existing evil here.

The administration of the Scottish system presents a number of features that might be advantageously followed in this country. Perhaps the most important of these is the independent position of the judge, who holds office for life, is paid an adequate salary, is free from political influence and newspaper pressure, and has the power to regulate the proceedings of the trial so that the issues are determined in simple and expeditious manner. This position, as has been already stated, was reached by a gradual development. There is some tendency along the same line in this country. Proposals are being made for lengthening the terms of judges, for electing them at other times than the regular political elections, and for increasing their powers at the trial. The administration of the law in Scotland surely teaches the value of an independent judiciary.

There is need for improvement in this country with respect to the position of the prosecutor and the capability of the men who hold this office. The term of service is everywhere short, and the office is a political one. Further than this, it is generally sought as a means of preferment along other lines. In the rural counties the prosecutor is generally a young man recently admitted to the bar, who expects his official record will win him clients, when he returns to private practice. In the metropolitan counties the prosecutor is often looking towards the gubernatorial chair, or to some other political position. In Scotland the prosecution of criminals is more of a profession. This is particularly true of the procurators-fiscal, who conduct the investigation of all criminal cases, and who prosecute in the sheriff courts. They receive what is practically a life appointment, and their preferment consists in being elevated to a more important post. The advocates-depute, however, go out of office with the party in power. It is highly desirable for us to take the office of public prosecutor out of politics, to lengthen the term, and to require special training in criminal law and procedure for the position. Many prosecutions fail because of the lack of skill on the part of the prosecutor. It would also be conducive to the better administration of justice if the strong partisan attitude of the prosecutor were lessened. Miscarriages of justice sometimes result through the eagerness of the prosecutor to secure a conviction. In some states prosecutors are compensated by fees,

the size of which depends upon whether the accused is convicted or acquitted. A fixed salary is preferable.

"Third degree" examinations by the police should be abolished. These are illegal, unfair to the prisoner, and often ineffective, since the sympathies of the jurors are aroused in favor of a person who has been subjected to such an examination. A provision, such as exists in Scotland, that an admission or confession made by an accused person in answer to the interrogations of the police shall not be admitted in evidence would go far to break up the "third degree."

It is very difficult to determine the exact results of the administration of the criminal law in this country because of the lack of adequate statistics. In Scotland there is published each year a complete report covering the number of apprehensions, the offenses charged, the result in each case, including the sentence, and the length of time in each case between committal and final determination. Such a report should be published annually in each state. It is unwise to propose sweeping reforms in our procedure without fuller information, than we now possess, of the results of the present system.⁹⁴

⁹⁴The member of the German commission, already referred to, as a result of his study of the Scottish system makes the following recommendation in his report: "It would be well for us to consider, whether we cannot become a little freer of beaucratic pedantry, whether we cannot confide more in the intelligence and independence of judgment of a suitably trained and elected staff of judges and prosecutors, and whether we cannot make our procedure somewhat freer and more natural." Dr. W. Mannhardt, "Aus dem Englischen und Schottischen Rechtsleben, p. 55."

A NOTE ON THE HISTORY OF FORENSIC MEDICINE OF THE MIDDLE AGES.

CHARLES GREENE CUMSTON, M. D.,

Boston, Massachusetts.

In the fifth century, the Germanic and Sclavonian peoples made an irruption into occidental Europe and overthrew the Roman Empire. The *wehrgeld* or price of blood, was the principle of the legislation of the newcomers, Goths, Franks, Alamans, etc. By them murder was not punished in the name of an ideal of justice or of morals, but instead, the author of violence paid to his victim or to the relatives of the latter, a pecuniary indemnity, the importance of which varied with the damage caused, likewise the quality of the person injured. The person who accepted the indemnity should afterwards relinquish all thoughts of further action. When one recalls the great love of the Germanic race for lucre, it will be seen that the legislators had thus found a most excellent means of avoiding perpetual vendettas, which would have distressed the tribes.

The law of the Alamans contains precise anatomical details on wounds; also on the compensation due according to the location and degree of the injury. The same applies to the Salic Law, some of the paragraphs of which I here transcribe.

Si quis alterum voluerit occidere et colpos falierit quid fuerit adprobatum, M M D dinarios qui faciunt solidos LXXX culpabilis iudicetur.

Si quis alterum in caput placaverit ut cerebrum apareat, et exinde tria ossa, quae super ipso cerebro jacent exierint, M. C. C. dinarios.

Si inter costas fuerit aut in ventrem ita ut volvus apareat, et usque ad intrania perveniat M C C dinarios, praeter medicatura, solidos V.

Si quis hominem placeaverit ita ut sanguis in terra cadat, D C dinarios culpabilis iudicetur—

The pregnant female was the object of special protection, to wit:

Si quis feminam ingenuam et gravidam trabaterit, si moritur XXVIII denarios—si vero infantem in utero matris suae occiderit ante quod nomen habeat, quid fuerit adprobatum, IV M dinarios culpabilis iudicetur.

According to Mende, Siebolt and Buchner, competent people (*vir probatae artis*) were permitted to examine and dress wounds and submit a report to the courts.

At the commencement of the IX century, Charlemagne, whose dream was to restore the Roman Empire, endeavored to put some unity in the legislation of the people under his submission. He ordered his bishops to write out and distribute by the *missi dominici*, this compilation of Germanic laws, of ancient Merovingian codes and Roman Law known by the name of the *Capitularies*. Many of its sections

imply a direct intervention of the physician, upon whose opinion the judges are expressly ordered to rely, particularly in cases of blows and wounds, infanticide, suicide, rape, bestiality, and divorce on account of impotency. On the other hand, the epoch appeared to be most favorable for the science of medicine which was at this time one of the foremost studies taught at the Imperial and Palatine schools. Charlemagne himself points out in the *Capitularies* of 805 and 807, that one should be initiated in the healing art from childhood.

A clearer comprehension of law, a general intellectual activity and an undoubted softening of the habits and customs of the people would seem to have been favorable elements for the development of an organization of the science of medical jurisprudence if unfortunately the unity of the Empire had not been entirely factitious. In point of fact, when hardly born, medical jurisprudence underwent the fate of the other institutions of Charlemagne. The Empire was divided up, the feudal regime became established while the local usages and customs reappeared and took back their predominance in law.

Then, aided by superstition, appeared the most absurd procedures in justice, originating from the mystic Germania, and formerly much in honor with the Franks. The supernatural was introduced in all trials and served to cover up all injustice. Both the people and judges were possessed of the same ignorance and passions as if mankind could be wicked only when uneducated. To inquests and investigation founded on reason, judiciary contest was substituted. Resort was also had to proofs (ordalies) by fire, boiling water and cold water.

In the first of these proofs the accused, in order to demonstrate his innocence, was obliged to carry a red hot iron bar in his hand for a given distance. In the second, the accused was forced to withdraw a ring from the bottom of a recipient filled with boiling water; while in the third he was thrown into water with his arms and legs tied. If innocent he sank to the bottom; otherwise his body floated on the surface.

It must be said that all the procedures were not so barbarous. In some instances the pleaders were asked to eat a certain amount of bread and cheese placed on the altar. Nothing abnormal transpired if the accused was in the right, but the guilty vomited the repast with severe convulsions. It was at this epoch that the "preliminary question" was put in practice, and resulted in the conviction of a most innocent person if not mentally strong and to save a guilty one if mentally well equipped.

In the cadaveric phenomenon known by the term of *cruentation*, one perceived a manifest proof of divine interference. King James of

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Scotland, in his work on Demonology, published in 1597, says that after a secret assassination, if the cadaver of the victim is once touched by the murderer, the blood will gush forth in order to call divine vengeance upon the criminal. The proof was carried out as follows: The suspected murderer was placed at a certain distance from the victim, the body being naked and lying on its back. He next walked around the body two or three times and then touched the wounds very lightly with his hands. If, during these manoeuvres, a flow of blood took place, the unfortunate person was convicted of murder. Should the contrary happen, then other proofs were brought into play.

This absurd practice was very extensively resorted to in England and Scotland, much less so in France where, however, we find an example of this kind in the full glow of the XVII century. This affair, recorded by Ranchin,¹ took place on May 3, 1639, in the little hamlet of Mas d'Azil. Upon several other occasions physicians discussed the value of this procedure. In 1594, Labavius, in *De cruentatione cadaverorum*, Blancus in 1547, in *Tractatus de incidiis homicidii*, raised some objections on the subject but did not dare formally to condemn it, while Michel Albertus, who published his *De hemorrhagiis mortuorum et jure cruentationis* as late as 1726, gives us to understand that in the XVIII century, cruentation was still resorted to as a judiciary proof.

However, in spite of the retardation in the progress and development of the law, medical expert examination was still in vigor as is made clear by the ancient texts. It is shown that at the time of judiciary proofs by combats, by water and fire, physicians, surgeons and midwives, were summoned, according to circumstances, to give their testimony under oath before the courts. Thus we find in the edict of Godfrey de Bouillon, also known under the title of the *Assises et bons Usages du Royaume de Jerusalem*, a passage relative to medical visits ordered by the courts. It is to discover the condition of the disease alleged by the vassal who refuses to appear at the court of his suzerain to plead his case. Let it be recalled that this was a judgment by battle, a type of barrister's speech requiring real vigor. I here transcribe the passage relating to medical expert work in *Assises de la Haute-Cour* Chap. 223.

Le Seigneur doit mander lors che' celui trois de ses homes comme court, un Mieg (physician) et un Fisicien (apothecary) et un Serorgien (surgeon). Celui des trois homes qui est la en leuc du Seigneur li doit dire Mostrea vos essoines a cestui Mieg, et il le doit faire, et cestui Mieg le doit veir et taster son pos, et veir son orine (urine), et se est chose que le Scrorgien doit conistre, il doit mostre sa bleccure (wound) en la presence de trois de ses homes que le Seigneur aura envoye'; et si le Mieg dit par son serment, de que il est tenu, que il est essoignes, l'on ne le pent a plus mener toul com il on le Serorgien ne

¹Ranchin; Opuscules et traite's divers et curieux en medecine, Lyons, 1640.

connoist en lui aucune chose ou dehait pourquoi il doit demourer d'alles a court, il doit aller est faire droit.²

In the same *Assises de Jerusalem*, it is stated that he who desires to make an accusation of murder must

Faire apporter le cors murtri devant li Hotel du Seignor on a leuc que il est etabli que l'on porte les murtris apres doit venir devant le Seignor et demander Counseill Sire mandez faire veir ce cors qui la vai gist qui este muriri, et le Seignor y doit lors envoyer trois de ses homes, l'un en son leuc, et deus com Court, et les trois homes que le Signor y envoie doivent aler veir le cors, et puis revenir devant le Seignor et dire en presence de la Court; Sire, nous avons veu ce cors que vous mandastes veir et avons vehu ce cos qui il a, ils doivent dire quant cos a, et en quel leuc il les a, et de quel chose il lor semble que ils aient este' fais.

Et se il ne a cos et se il ya aucum autre entresigne par que il leur semble que il a este' nurtri, ils le doivent dire au Seignor.³

The above is transcribed from the *Assises de la Haute-Cour*, Chap. 85, entitled: *Quel chose est murtre et pourquoi l'on doit savior*. Now, as Ortolan has very properly remarked all the knighthoods of Christendom, with their men, were represented among the Crusaders, and that the *Assises et Usages* of the new kingdom were derived from those generally distributed throughout Europe, especially in France. It may, consequently, be taken as true, all reference these visits of physicians and surgeons as a common custom of the epoch. Then again, in a *Recueil d'Etablissements et Coutumes, Assis et Arrêts de l'Exchiquier de Normandie*:

Relative to the period 1207 to 1245, is to be found the following passage stating that if a person ordered to appear before a court of law invokes an "essoine" resulting from a disease of "Langor," "celle de langor sera vene par leans,

²The Lord should then order three of his subjects to sit as a court, a physician, an apothecary and a surgeon. He of the three who is there in place of the Lord should say: Show your wounds to the physician and he (the plaintiff) must so do, and the physician should examine and palpitate his person, see his urine and examine into everything that the Lord should know. He must expose his wound in the presence of three men sent for that purpose by the Lord; and if the physician, by his oath, which he is obliged to take, finds him injured, he may plead his case before the court for damages.

³"Bring the murdered body before the residence of the Lord or at the place ordinarily used for exposing murdered bodies, after which he must come before the Lord and request a council. "Sire, order that this body which has been murdered be examined" and the Lord must then send three men, one in his place and two to form a court, and these three men must view the body and then return before the Lord and say in the presence of the court: "Sire, we have seen the body that you asked us to view and have examined into the facts and then they must state in what place and what occurrence has taken place and what appears to them to be the facts, and if there does not appear to them to be any cause for suspicion of murder they must so state to the Lord."

"Justice must examine her genitals and wound by midwives and by those who may know whether or not she was taken by force." In the *Grand Coutumier* of the country and duchy of Normandy it is stated that "experienced men and midwives must proceed to investigate by direct examination and other means of verification; view a man ill (in bed) or with a wound or one that has been killed, or a woman who has been raped. The *Coutume* of Maine required learned people, free from all suspicion, with juries well informed in such matters."

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seavoir mons (in order to ascertain) se cil qui gist en son lit se faint que it soit malade."⁶ If a girl complained of having been raped, "*La Justice jera veir, la meschin e sa bleccure par preudes femmes (midwives), et leans qui sachent que-noistre se elle a este' prinse de force.*" In the *Grand Coutumier*⁶ of the county and duchy of Normandy it is stated that "*Leans hommes et de preudes femmes procedaient a diverse veues et verifications; veue d'homme en langor, veue de mesfait, veue d'homme occis, et veue de femme despucelle. In the same way, for such forensic medical expert work, the Coutume de Maine required "preudes gens, non suspects avec jure's scavants et connoissem's en telles choses."*

I would mention also the *Coutume de Paris* or *Etablissement de saint Louis*, 1260, which did away with the judiciary duel, and in its stead required proof by testimonial proofs, thus contributing very greatly to the development of expert medical work.

On the other hand, the Canon Law was about to occupy an increasingly greater power in the jurisdiction of the people. In 1254, Pope Gregory IX collected and published under the name of *Decretales*, the religious decisions of all the Councils which had been held up to that time. Many new questions had been raised therein which of necessity would result in medical expert work. The *Decretales* ordered careful and complete inquests in the case of impotency, from which arose the famous proof by congress. This proof was the object of ardent discussion and violent attacks for centuries. *Impotentia coeundi* has at all times been a motive for divorce in the Church of Rome. The *Decretales* of Gregory IX prescribed in 1254, very minute inquests; it was not enough to make a medical examination of the genital organs and it was considered most logical to resort to the act of coitus itself, accomplished in the presence of witnesses. I here will transcribe what the famous surgeon, Guy de Chauliac, says in 1363, on this subject in his *Grande Chirurgie*:

*Le medecin utoris pae le magistrat examinera le temperament, la conformation des parties, pas il nommera d'office et choisera uinne matrone savante et experimentee en la matiere; et il ordonnera que le mari et la femme couchent ensemble; cette matrone les exhortera—; elle lem oindra les parties genitales avec un onguent approprie, devant un fen de sarments; elle rapportera fidelement an medecin ce qu'elle aura vu, et celui-ci en fera son rapport; mais qu'il prenne garde de se laisser trompers.*⁸

That this was undoubtedly feared is made evident from the fact that later a commission composed of three physicians, three surgeons and three midwives was appointed in the place of the matron, and it

⁶"He having langor must be examined, in order to ascertain if he who remained in bed is simulating that he is ill."

⁸The physician authorized by the magistrate should examine into the temperament, the condition of the parts, then ex officio he will appoint a midwife, learned and experienced; and then will order the husband and wife to go to bed together; the midwife will then exhort them to coitus—. She shall cover the genitals of both with a proper ointment; she will then faithfully relate to the physician what she observed and he will then make out his report, being careful not to be mistaken.

developed upon it to determine *an facta esset emissio, ubi, quid, et quale esset emissum*. A curtain separated the couple from the witnesses. The judges, both ecclesiastical and laymen, waited in an adjoining room.

Unanimously opposed by all physicians and a large proportion of the clergy, by Ambroise Paré, Tagereau, Guillemeau and Rabelais, among many others, who denounced the indecency and uselessness, the congress still thrived up to the end of the XVII century. It was the object of universal derision and Boileau, in his VIII satire thus expressed himself:

*Jamais la biche en rut n'a pour fait d'impuissance
Trainé du fond des bois un cerf à l'audience
Et jamais juge entre eux n'ordonnant le congres
De ce burlesque mot n'a souille ses anets.*

Finally, the congress received its death blow upon the occasion of the trial of the marquis de Langeais, who was found impotent by the proof, and who, having remarried, had nine children by his second wife. Under pressure of public opinion, it was decided to appoint a commission to examine the value of the procedure, and on February 18, 1677, from the conclusions arrived at by the members of the commission, Parlement forbade all judges from ordering the proof by congress in all cases of divorce for impotency.

The Decretales also required an inquest to be held in cases of abortion and assault with criminal intent. All medico-legal cases which in any way involved the dogmas of the Church were tried before ecclesiastical tribunals, side by side with the regular courts. Thus, according to Hoenser, in 1249, a physician was called by the tribunal of Bologna in order to testify, after examination of the prisoner, in a case of abortion. Before this, a decree of Innocent II, dated in the year 1209, refers to medical examination of wounds as a practice ordinarily resorted to. The case in point was that of a church robber, who had been struck by a spade, and the tribunal desired to know if the blow had been sufficiently slight *ut peritorum judicio medicorum talis percussio assereretur non fuisse lethalis*.

From the year 1200 up to the end of the XVII century religious influence dominated the social morals and mentality, likewise both civil and criminal procedure. The minds of the people were profoundly imbued with the Catholic doctrines and on many points medical jurisprudence became united with the casuistic. Canon Law dominated everything and regulated after its own fashion, questions of separation and witchcraft; it intervened in all civil and criminal cases, particularly those in which morals were involved. It was in theology, in the Bible and the Fathers of the Church, that the physicians looked for the con-

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trol of the principles laid down by Aristotle, Hippocrates, Galen and Avicenna. The end of the XIII century must be reached before one finds a trace of an organization of medical jurisprudence having some evidence of being official. The letters patent of Philippe le Hardi, dated May, 1278, offer proof of the existence of sworn surgeons for medico-legal expert work. Philippe le Bel, the legist king, surrounded medical expert work with some guarantees for the regulation that he endeavored to introduce relative to the practice of surgery. This profession had, up to this time, been open to anybody, but the oft quoted Edict of November, 1311, forbade any surgical act to all who had not passed the examinations before the sworn surgeons of the Chatelet. We also learn that sworn physicians, surgeons and matrons were invested in the right to make reports to the courts concerning wounds received, and death occurring on highways. In England, "Edward the Fourth, in the year 1461, granted the charter of incorporation to the barber-surgeons and the barber and the surgeon continued in the same corporation for three centuries."

From the time of the edict of Philippe le Bel, are to be found in some of the criminal records, particularly those of the Chatelet, accounts of testimony given by sworn surgeons and it may not be devoid of interest to quote some of them. The first six are recorded by Desmazes in his *Historie de la medecine legale en France*, Paris, 1868.

Le 31 juillet, 1332, mestre Henri Tristan chirurgien, institue et depute en lieu de mestre Vailli, mire jure, conslate le peril hors de mort et mehaing, de Ponce de Canderon, navre d'une playe en teste." This same Tristan declared "avoir ven, viste, teste le corps Tristan Jehannin de Troyes, mort sans casseure, froisseure, blesseure et sans aucun coup, mais enleve par maladie apportee au servel, qui est apelee en l'art de serurgie et de medecine apopleisie, et laquelle s'est expurree par les narines, oreilles et bouche, puis la mort le 25 aout 1332 apres la Saint-Barthelemy apostre.

On December 10, 1337:

Mestre Pierre de Largentiere, mire chirurgien jure declare avoir ven, visite, taste, regarde, cherche, manie par tous les membres, conduits et entrees du corps, Jehannot Paci, vallet boucher, mort de mort naturelle sans presenter per-seure, froisseur, briseure, casseure et sans aucun sang et playe.

On February 28, 1330, this same sworn surgeon, after having

Ven et visite, regarde en la maniere qu'il appartient a l'art de la chirurgie, Jehan de Meudon, navre en la teste et batu de coups orbes par pleusiens parties du corps entour les yeux et les jambes, rapporte peril hors de mort mais non de mehaing.

On June 14, 1338, the drowned cadaver of Huguelin was exposed under the elm tree, to the people and the sworn surgeon of the court. It had been found in the well of Leberruier,

*Cumston, The Charter of the Barber-Surgeons and Holbein's Painting, N. Y. Medical Journal, 1912.

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Maistre de Largentiere apres avoir vu, ne trouve aucune playe mortelle de necessite, anicoy estoit mort pour cause du fait de cheoir dedans le puits on il estoit cheu, par quoy la cervelle lui estoit esmeue et froissee.

On December 16, 1337, Richard Langles, a candle maker, was struck a la paniliere, by foot kicks of Picard,

*Est gisant au lit, les pieds ne poiwant porter le corps, maistre Pierre de Largentiere, mire jure, rapporte le peril hors de mort mais non sans mehaing.*¹⁰

The surgeon was occasionally interrogated as to the nature of the weapon used for the murder as the following shows, which with the second is extracted from the *Registre criminel du Chatelet*, published by Lebrun, Paris, 1861.

*Le 14 decembre, 1390,—sur quoy oy maistre Jehan le Conte, chirurgien du roy, qui dict que le playe faite au dit feu Criquetot, en la teste, fu d'une hache, si cumme il croit en sa convuience." On August 10, 1343, was placed under the elm tree "Jehan le Rous, paletrier, rue Quequempois, lequel s'estoit pendu de ses lanieres par le col, et etrangle, estout tout fol et hors de sens."*¹¹

On February 23, 1338, Eudelot la Picarde accused her master, Guillaume Damour, of having, two months previously, with force and menace of death, tried to violate her, she being at the time a virgin. As the victim could not prove her case, the accused was not condemned, because she did not appear against the prisoner. The task of examining women in cases of criminal attempt was reserved for the matrons, who retained

¹⁰July 31, 1332, Master Henri Tristan, surgeon, ordered in place of Master Vailli, sworn physician, observes injury not enough to cause death, in the person of Ponce de Cauderon, who received a wound on the head. This same Tristan declared "that he had seen, examined and palpated the body of Tristan Jehannin of Troyes, dead without fracture or wound and without evidence of blows, but killed by a disease of the brain, which is called in the terms of medicine and surgery, apoplexy, and which became expurgated by the nostrils, ears and mouth with death on August 25, 1332, after the apostle Saint Bartholemew.

On December 10, 1337, Master Pierre de Largentiere, sworn surgeon, declares to have seen, examined, palpated, and examined each limb, opening and cavity of the body, Jehannot Paci, butcher's boy, dead from natural causes without presenting evidence of blows, contusions, fracture, and without presenting blood or wound.

On February 28, 1330, * * * after having viewed and examined according to the rules of surgery, Jehan de Meudon, injured on the head and beaten by blows on several parts of the body, around the eyes and legs, reports injury not fatal but not without danger.

On June 14, 1338, * * * Master de Largentiere, after viewing it, found no lethal wound and concluded that death was caused from the fall into the well, which injured the brain.

On December 16, 1337, Richard Langles, a candle maker, was struck on the spine by foot kicks of Picard, and was in bed, the feet not being able to support the body. Master de Largentiere, sworn physician, reported a condition of danger, but not fatal.

¹¹December 14, 1390,—upon having heard this, master Jehan le Conte, surgeon to the King, says that the wound inflicted on the late Criquetot, on the head, was done with an axe, to the best of his knowledge and belief. On August 10, 1343, was placed under the elm tree Jehan le Rous, tailor, living rue Quequempois, who had hung himself by the neck and strangled, being insane and without common sense.

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this privilege in France until the Revolution, but in all times the surgeons held them in low estimation on account of their ignorance. *Elles ne doivent etre creues pour leur imperitie*, said Paré in 1575, and later de Blegny says:

*Le chirurgiens ne veulent avoir de relations avec elles, ils aiment mieux delivrer leurs rapports se'parement que de se compromettre avec des personnes qui tombent souvent dans l'erreur par ignorance, malice ou opiniastrete.*¹²

I will here give some examples of the reports given by these matrons. On July 13, Jacqueline la Cyriere was arrested on complaint of her daughter, Jehannette, fifteen years of age, that the former had given to a Lombard. After taking oath, the matrons declared that

*Elles on vu, visite, taste, regarde et manie, bien et diligemment, en la maniere qu'il appartient en tel cas estre fait; laquelle Jehannette fut trovee defloree et percee tout oultre et si vilainement depareillee que c'est et c'estoit chose orrible a regarder, et estoit conompue tout oultre et vilainement blessee, et desiree en toute nature.*¹³

Emmeline la Duchesse, a sworn matron, declared under oath that *Jehanne Mabillette, se disant grosse d'enfant et batue par Duchemin et Ravel, n'a aucune enfleure au ventre ne signe de grossesse d'enfant.*¹⁴

On January 3, 1392, a woman accused of theft pretended that she was pregnant in order to avoid the ordeal of the torture:

*Agace la Francoise et Jehanne la Riquedonne matrones jurees du roy nostre sire, rapportent qu'elles ont vene et diligement visitee a grant diligence Marion de la Court, prisonniere dessus nommee, taste, mesniee a nu et au mieux qu'elle ont peu et sceu, et ne tiennent en elle acun signe par quoy elles peussent et osassent tesmoigner que elle est grosse d'enfant car elle est moult plat de ventre, et vue l'esmonvance d'elle qui se debat en la vistant et regardant son ventre, tiennent et croient en leurs consciences que elle n'est aucunement grosse on enchargee d'enfant.*¹⁵

And lastly, here is a report given two hundred years after the above, by four matrons of Paris, recorded by Laurent Joubert in his *Traite des erreurs populaires en medecine*, Lyon, 1534. I would say, however, that the strange vocabulary employed by Joubert, is very difficult to un-

¹²"They should not be believed on account of their ignorance," said Paré in 1575, and later de Blegny says: "The surgeons will have nothing to do with them. They prefer to give their reports separately than to compromise themselves with persons who frequently fall into error on account of ignorance, malice or from obstinacy."

¹³After taking oath, the matrons declared that they had seen, examined, palpated, looked and felt of, carefully and thoroughly, as is proper in such cases; that the said Jehannette was found raped and pierced through and through, and was so fearfully injured that it was horrible to see, and was very ill and terribly wounded, and in every manner injured.

¹⁴Jehanne Mabillette, claiming to be pregnant and beaten by Duchemin and Ravel, has no swelling of the belly nor other sign of pregnancy.

¹⁵Agace la Francoise and Jehanne la Riquedonne, sworn matrons of the King, report that they have seen and carefully examined Marion de la Cour, prisoner above mentioned, palpated and handled naked, as well as they knew how and find no sign by which they could or would dare to say that she was pregnant, because the belly was flat and from the movements of resistance made by the prisoner they could see that the abdomen was normal and truly believe that she is now not large with child.

derstand, but is for all that a most interesting document, and therefore the translation will be omitted.

"*Nous marion Teste, Jeanne de Means, Jeanne de la Guigan, et Magdeleine de la Lippue, matrones jurees de la Ville de Paris, certifions a tous qu'il appartient que le quatorzieme de juin 1532 par l'ordinnance de M. le Prevost de Paris, nous nous sommes transportees en la rue de Frepant, on pend pour enseigne la Pantoufle, on nous avons vu et visite, Henriete Peliciere, jeune fille agee de quinze ans, sur la plainte faite par elle en justice contre Simon de Bragard, duquel elle a dit avoir este forcee et defloree. Et le tout vu et visite au doigt et a l'ocil, nous trouvons qu'ellea; les barres froissees, le haleron demis, la dame du milieu retiree, le pondeant biffe, les toutons devoyez, l'enchenari retourne, la babbale abbatue," l'entrepont ridde, l'arriere-fosse ouverte, le guilboquet fendu, le lippon recroqueville, le barbidant tout escorche, le lapandis pele, le guilhevard elargi, les balunais pendans; et le tout vn et visite fenillet, avons trouue qu'il y avait trace de v—*

From what has been said it is evident that the sworn surgeons aided the courts with their scientific knowledge, but their reports were of little value in those days when autopsies were not made and the anatomical learning meagre, that of physiology totally unknown. The surgeon could only state in a few words his diagnosis and prognosis—that was all.

Then, too, the judicial mind was undeveloped in the sombre epoch known as the Middle Ages, which extended from the XIII to the XV century. Torture was the means resorted to in order to obtain a confession of the supposed crime. The penalties were ferocious. Sodomy and buggery were assimilated to heresy and the person burned to death. A trial of the cadaver took place in cases of suicide and the *Coutume de Bretagne* says:

*Si aucun se tue a son escient; il doit estre pendu par les pieds et traine comme meurtruer, et ses biens meubles acquis a qui il appartient.*¹⁶

And a famous jurisconsult, Damhouder by name, gravely propounds the question; Is fornication with an infidel to be considered a case of bestiality?

In the Middle Ages the insane ran in the highways without restraint, and mental diseases had a fertile soil upon which to grow in a depressed, superstitious and physiologically miserable people. It is for this reason that the strange epidemics of chorea and hysteria developed, which to the vulgar appear almost supernatural in nature. Then frightened by the extension of demonopathy, Pope Innocent VIII applied potent medicines to great afflictions. In 1484 he issued a bull against witchcraft and medical inquests were ordered in these cases. The physician studied the attacks of the supposed sorcerer, examined the condition of the secretions and excretions, and above all, armed with a

¹⁶If one kills oneself, he should be hung by the feet and dragged like a murderer, and his belongings should be taken by the proper persons.

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needle, sought on the surface of the body the sure indication of the presence of the devil, the areas of anesthesia, the *Stigmata diaboli*.

Pierre de Lancre, council of the Parlement of Bordeaux, himself tells us that he was aided by

*Un chirurgien estranger, mais ne'anmoins pour lors habitant le Bayonne, qui a force de visiter les dits sorciers et rechercher leurs marques y devint merveillement entendu et suffisant.*¹⁷

Linas says;

*"L'il est affligeant de voir un certain nombre de medecines et de chirurgiens imbus des funestes prejuges d'alors, justifier par l'autorite de leur nom et de leur savior, les estranges pratiques des exorcismes et souscrire aux redoutables sentences des inquisiteurs de la foi, on ne saurait oublier a titre de consolation, que c'est du sein du corps medical que se sont elevees les premieres et les plus energetiques protestations en faveur des socriers, et que beaucoup de ces malheureux ont du leur salut a l'habile et genereuse initiative des homes de l'art."*¹⁸

¹⁷"by a foreign surgeon, but however, then dwelling at Bayonne, who frequently visiting, the said sorcerers and looking for their marks, became very learned and expert in the matter."

¹⁸"If it is afflicting to observe a certain number of physicians and surgeons imbued with the fateful prejudices of the times to justify by the authority of their name and learning, the strange practices of exorcism and subscribe to the fearful sentences of the inquisitors of the faith, it should not be forgotten as consolation, that it was from the midst of the medical corps that the first and most energetic protests in favor of the sorcerers arose and that many of these unfortunate people owed their life to the crafty and generous initiative of medical men."

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GUY G. FERNALD, A. M., M. D.

Resident Physician, Massachusetts Reformatory.

It is to be noted that about all of the measures proposed as reforms in penal administration could be catalogued as "Recommendations of an extension of classification" and, from another viewpoint, there are probably but few authorities in criminology who would suggest any other avenue as that along which penological science is to advance than that of an extension and improvement of classification. What should be the basis of further effort to this end?

Up to the present time attempts at classification of prisoners have been confined almost wholly to the separation of long sentence servers from the short term offenders, the separation of felons from misdemeanants and the differentiation of older and experienced offenders from the younger and less sophisticated—distinctions based on variety of offense or experience in criminality. These distinctions are wise ones as far as they go and we should continue to make them with responsible prisoners; but there is a more vital difference between men which has not yet been recognized in our scheme of classification, namely: that which obtains between men of full mental responsibility and those of a limited or partial responsibility. And in adapting treatment to those of limited or inadequate mental capacity, especially, their defectiveness should be considered rather than the kind of offense committed or the degree of experience in criminality. The reasoning is faulty which leads to the classification of offenders on the basis of the kind of offense committed; i. e., on an effect instead of a cause. Rather should classification be based on the kind of mind which renders the offense possible. Then a vital, significant, causal factor is the basis of classification. This recommendation is occurring with increasing frequency in recent and current criminological literature.^{1 1/2}

The next step in the extension of classification need not be revolutionary or bizarre. All delinquents may be conceived of as in one or the other of two classes: either they are in the large class of responsible persons, amenable to reform, whose mental equipment is adequate for their honest self-support; or they are in the much smaller class of those

¹Read at the annual meeting of the American Prison Association in Baltimore, Nov. 11th, 1912.

^{1 1/2}Warren F. Spaulding, *Am. Journal of Criminal Law and Criminology*, Vol. III, No. 3, p. 378.

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whose mental equipment is inadequate for honest self-support, hence they are of limited responsibility and in addition have a training in criminality and anti-social tendencies in some degree. This comparatively small class is that from which our recidivists are recruited,² and if its members were differentiated and segregated under appropriate and special treatment adapted to their needs; both classes would benefit thereby and the diminution of criminality would be directly and effectively promoted.

The question is, should not delinquents be classified as fully responsible and reformable on the one hand; or as of limited responsibility and in need of special treatment on the other hand? The contention is that treatment on the basis of such classification would contribute very largely and directly to the diminution of criminality.

The small class of offenders under consideration includes defectives with a criminal history or tendencies, those border-land cases between the feeble-minded and the competent, between the sane and insane and the "moral imbeciles,"³ those so aptly termed the "futile residuum" by one of the very highest authorities.⁴

A convenient treatment of the subject matter to be presented is under three heads, viz:

1. A characterization of the mental type known as the recidivist or defective.
2. A method of differentiating members of this class.
3. An administrative suggestion as to the treatment of this class.

Penologists need no definition to enable the recognition of recidivists; but, to discuss intelligently methods of differentiation and treatment we should have a common conception of this unique, important, perplexing and often misunderstood class. A finished representative of the type with a history is easily recognizable, though different representatives of the type present an almost infinite variety of form of manifestation. This wide diversity is due to differences in nationality, disposition, training, taste, and temperament: differences which make for individuality and which are relatively superficial rather than vital.

The essential mental characters which distinguish the recidivist as a class from other prisoners are those which incapacitate him for reacting normally to his environment. The fundamental differentiating character common to all members of the class, and not to members of other classes in the same degree, is that of a degenerate or inadequate mentality mani-

²Dr. Bernard Glueck, *Journal of Criminal Law and Criminology*, Vol. III, No. 2, p. 220.

³Dr. I. N. Kerlin, 17th National Conference of Charities and Corrections, 1890, *Proceedings*, p. 244.

⁴Prof. Henderson in "Preventive Agencies and Methods," *Charities Publication Com.* p. 42.

fest in the intellectual sphere or in the moral sphere or in both, usually slight in degree relatively, but associated with a tendency to criminality or vagrancy. Certain characteristics anomalies and aberrations of psychic development are to be observed also, such as an exaggerated ego or obstinacy or a characteristic lack of foresightedness and of fixity of purpose. These, however, are frequently found upon analysis to be dependent upon demonstrable deficiencies. Recidivists are essentially deficient—sometimes more than that—but always deficient; deficient in adaptability, in ambition, in moral sense and moral stamina, in self-control and self-criticism, in judgment or in others of the mental attributes essential to such a measure of success in life as is implied in honest self-support; hence their responsibility for anti-social and illegal acts is limited. Some examples of this class are at times in our hospitals for insane criminals because their mental equipment is such that they cannot react normally to the disciplinary demands, restraints and measures of training which must be met by prisoners under sentence.

Studies of this type have shown its representatives to be possessed of much the same feelings and mental faculties as their better controlled fellows, the difference being one of degree rather than of kind. Feelings of shame, remorse, reverence, love, gratitude, ambition, revenge, jealousy, etc., are represented in their mental field; but they differ in degree of spontaneity and controllability from those of the successful citizen. As we have elsewhere stated:⁶ "The reason such a prisoner cannot be reformed is to be found in his peculiar intellectual equipment, the result of arrested mental development. The high grade imbecile is often a plausible, glib talker and sometimes he can make a good first impression on a superficial observer; but he is egotistical, uninformed and anti-social. He lacks high ideals and real morality, though he may have a fair academic knowledge of right and wrong. He is incapable of long endurance and sustained effort and concentration of attention, and so can neither acquire skill and knowledge nor accumulate wealth. He lacks a worthy central ambition or plan in life, and seldom has a well defined method in view whereby to accomplish his puerile projects. He is easily bullied or flattered, being very "suggestible;" but is seldom influenced by an appeal to the higher mental qualities; ambition, gratitude, reverence, remorse, etc.; in fact it often seems that self-interest is almost the only motive that can be stimulated into sufficient activity to become a source of action, and that his egotism is about the only route to what he may wish

⁶"The Defective Delinquent Class: Differentiating Tests," *Am. Journal of Insanity*, Vol. LXVIII, No. 4.

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to conceal. He will almost invariably sacrifice future lasting benefit for some trifling immediate gratification. Easily swayed by some ignoble impulse or inclination, he is not easily amenable to the influence of reason, and so is unstable in temper, and unreliable or dangerous. Conscience, concern for consequences and a feeling of responsibility, honor and fairness seem represented in his field of consciousness by vestigial remnants only. He urges and is easily satisfied with invalid excuses and sophistries for shortcomings. His acts and decisions show defects of judgment which, with his lack of constancy, are fatal to his chances of success. Some exhibit arrogance and conceit with small basis therefor. Many can do fairly well under surveillance; but left to themselves they are inconstant and fail.

"As a class their patriotic and altruistic feelings are weak, and their fear of personal or physical harm is unduly strong, so that they are likely to be cowardly and cruel. They often falsify, lacking a love of truth for its own sake, and not being far-sighted enough to see that an untruth is never expedient. They lack an adequate conception of the value of consistency, fidelity, forbearance, fortitude, accuracy, system and logical sequence. These people often volunteer that they 'can't help doing wrong,' or ingenuously assert in justification that they 'wanted to do' so and so, and the pitiful truth is that such expressions of feeling are acceptable to them in lieu of reasons. Self-criticism is outside their thinking. Sometimes it is not a defect or lack of ability that defeats them, but their failure to use or co-ordinate their faculties in crises, whence their poor judgment and lack of self-control. On examination they exhibit a lack of training, of course; but the significant fact is that this class has a defective capacity for training. They show an undue number of the mental stigmata of degeneracy and easily become victims of alcohol and drug habits. These mental characteristics are common to all misde-meanants in some slight degree at least, and even the best equipped of mankind may show some of them at times; but the class under consideration exhibits them in a marked degree and frequency of incidence."

The confirmed recidivist is the product of the continual irritative demoralizing action of our ordinary, though highly specialized life on a congenitally inadequate organization. Those observers who have made catamnestic studies of juvenile defective delinquents find that defective subjects become recidivists; and it is a statement as true as it is trite that recidivist in most cases is none other than the juvenile delinquent in adult the anamnesis of every recidivist shows that he began his criminal career

in his youth. So, in the absence of statistics, it is a fair inference that the life, and that every defective delinquent is a potential recidivist. Although pronounced examples of the class under consideration are easily recognizable, yet the determination of the classification of border-land cases, especially when dealing with youthful offenders having a short criminal history, is a matter not to be lightly undertaken. Nevertheless, it is quite within the capacity of our present-day methods of scientific research to extend classification so far that but very few undiagnosed cases remain.

We recognize the futility of attempting to differentiate the guilty from the innocent, the habitual criminal from the accidental or the defective from the fully responsible on the basis of the physiognomical characters, physical abnormalities, cranial or other physical measurements. All such are attempts to distinguish between classes on the basis of a superficial or accidental difference. A recent careful study of the physical characters of 3000 prisoners in England resulted in demonstrating that there is a striking similarity, physically, between the criminal and non-criminal classes.⁶ The superficial difference between the delinquent and the honest citizen would seem to consist in the fact that each has reacted differently to social and legal requirements. The character or characters which enable or cause this diversity of reaction would seem to be the fundamental difference to be measured in demonstrating the classification. An enabling or producing cause of this kind is not a physical peculiarity, evidently, but an endogenous mental character. Recognizing this fact modern criminologists have turned to the psychic or mental characters and are making free use of the psychologist's methods of research, and with his tests are seeking to measure mental efficiency and mental defect.

Sociologically, therefore, the difference between the class under consideration and the rest of mankind is very great, and psychologically, the difference is fundamentally characteristic and demonstrable.

Before venturing to suggest a suitable environment for recidivists it is appropriate to outline a method of differentiation. In applying and proving this method of examination at the Massachusetts Reformatory valuable diagnostic and statistical data were obtained besides the results indicated. In undertaking the study the following considerations could not be ignored:

1. The group examined should be strictly representative.
2. Scientific validity of conclusions demands that a large group of cases be studied.

⁶Justice DeCoursey, *Am. Journal of Criminal Law and Criminology*, Vol. II, p. 110.

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3. The ratio of the number of subjects yearly to the examiner's spare time limited the time available for each subject's tests and precluded an intensive study of the group.

4. The purpose of the study is to secure for each subject a valid basis for classification always excluding the personal judgment of the examiner on individuals and their reactions.

5. Field work, as a source of anamnestic material, is not available for this research.

The method employed consisted, essentially, in recording for comparison all the available information on each one of a representative group of 100 subjects. The sources of the recorded facts were, briefly, as follows:

1. The subject's clinical history carefully obtained.
2. His Reformatory conduct record and Evening School and Industrial School records.
3. His police and court records.
4. Simple tests of scholastic attainment.
5. His reactions to 11 psychological tests uniformly applied and checked up by comparison with similar results obtained from a norm group of 12 Manual Training School students of comparable age and degree of mental and physical ability.

The information from the first four of these five sources not being reducible to record and comparison as mathematical data are assembled and treated as clinical notes on each subject. The information from the application of the psychological tests, however, readily lends itself to mathematical study and comparison and to the application of the computations of the science of mental measurements. Each of these dissimilar modes of examination, the alienist's and the psychologist's dealing with different, yet cogent materials check up and supplement each other admirably; e. g., if the clinical information indicates that a subject's mental capacity is of a low order, the psychological information treated mathematically not only confirms this finding, but shows just how low in the comparative scale of 100 that particular subject stands, and what his relative standing is to the norm group in efficiency. Yet the two methods of examination are quite independent.

The psychological tests were chosen or devised with the following desiderata in view; viz:

1. As great a variety of each subject's mental activities should be tested as the available time permits.
2. Tests should be such that each subject's efficiency may be scored with a single numerical value in order to measure, group and compare scores by the methods of the science of mental measurements.
3. The apparatus required should be easily procurable and portable.
4. The tests should be such as to be independent of both the language factor and previous training.

¹Edward L. Thorndike, "Mental and Social Measurements," Science Press, N. Y. Guy M. Whipple, "Manual of Mental and Physical Tests," Warwick & York, Inc.

5. Tests adapted to mental ages below five are needed in exceptional cases only; since tentative and exploratory examinations indicate that the mental ages of the least efficient of the Reformatory subjects are probably not below that of five or six; and that, in the case of the most efficient subjects, the mental age varies little from the chronological.

The distinctive features of this investigation, a detailed account of which has been published, are as follows; viz:

1. Two new psychological tests are employed.
2. The treatment of efficiency scores is by the methods of the science of mental measurements, a treatment made possible by scoring with single numerical values and thereby securing, as one advantage, the automatic arrangement in series of the subjects according to their relative standing.
3. The combination of the alienist's with the psychological examination. By this treatment the personal judgment of the examiner as a factor in determining the classification of the individual is so minimized as to be practically eliminated, and the subject and his friends need not feel that the examiner is the arbiter of the fate of those examined.

The list of tests employed, eleven in number, and the computations based thereon gave an arrangement of the subjects in a series on the basis of mental efficiency which was consistently parallel with the clinical findings. This procedure, however, while adequate for the determination of classification on the basis of intellectual efficiency cannot be expected to serve in another capacity as well. To detect cases of mental alienation, of degeneracy, of moral deterioration or of neuropathological aberration other and appropriate means of examination must be employed.

The results of the investigation outlined were as follows; viz:

1. The dividing line between normal and subnormal prisoners, i. e., between those whose mental age is not appreciably below their chronological age and those in whom the difference is appreciable falls at about No. 52 in the series of 100. (This figure, 52, and that of the following paragraph, 24, are estimates in each case from a group of border-land cases and are not submitted as an attempt to show that case 53 e.g. is wholly normal, and that case 52 is obviously subnormal.)
2. Twenty-four are clearly "Defective," i. e., so far deficient intellectually that they could not be expected to reform or support themselves honestly if released without surveillance.
3. Of these "Defectives" about one-half are of such a truculent and intractable disposition that they should be committed (not sentenced) at once to an environment suited to their needs, where they may be trained in simple industries and prevented from procreation.
4. The less disturbing half of the "Defectives" could be added to the above mentioned class without injustice.
5. Alienists' methods of examination showed in the group of 100, three insane or epileptic, five morally defective, one both morally defective and sexually perverted. One case of visual defect was found which improved in mental efficiency rapidly after errors of refraction were corrected.

Since the publication of the statistics on which the above conclusions were based it has been found by one of the most eminent research workers in this field that probably not less than 25% of the criminals who come before our courts are feeble-minded and that a much larger per-

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centage of the children brought before the Juvenile Court are defective.⁸

Beside the statistical results above outlined, the following conclusions were reached:

1. The responsibility of the defective delinquent is limited. Therefore this class should be committed to a suitable institution or colony, instead of being sentenced for punishment with fully equipped misdemeanants.

2. The differentiation of mental defectives of the highest grade is based solely on the measurements of mental characters.

3. Mental characters capable of expression may be measured by applying uniformly properly adapted psychological tests.

4. Cases of moral perversion, sexual deviation, degeneracy, insanity, etc., are not to be diagnosticated by tests adapted to differentiate defectives; but require other and appropriate means of investigation.

5. By the transmutation of the efficiency scores obtained from the application of appropriate psychological tests the relative standing of each subject in a group may be mathematically determined.

6. The group of scores and computations presented may serve as a nucleus to which new scores may be added, each in its relative standing, by alienists using the same tests and methods of computation.

Having now briefly outlined a conception of the class under consideration and a method of determining the individuals belonging thereto, let us inquire into the treatment indicated, i. e., into the social and administrative aspects of the problem. In the first place, recidivists, being demonstrably defective and more or less trained in criminality, should be kept out of criminality and under training towards honesty and industrial activity for a sufficiently extended period, and being defective and not wholly responsible they should not be sentenced, but should be committed indefinitely as are the insane and feeble-minded. To free all other classes of the community from their demoralizing and often dangerous influence they must be absolutely segregated—physically separated from every other class. Both normal prisoners and defectives may be better disciplined and, what is even more important, will the better preserve self-respect when each class is by itself than is possible when they serve sentences together.

An environment adapted to the needs of this class is a custodial, industrial institution or colony under the direction of a medical specialist in psychopathology where simple industries and farm work form the principal occupations; and where all the essential features of a psychopathic hospital are provided.⁹ To obviate the objectionable feature of the mingling of adult and adolescent defectives, an institution of the kind indicated would, in its beginnings, admit only adolescents. These, as they became institutionalized and trained in the remaining years of the formative period, would be far less intractable after some years spent in a mental

⁸Dr. H. H. Goddard, *Am. Journal of Criminal Law and Criminology*, Vol. III, No. 1, p. 373.

⁹"*Am. Journal of Criminal Law and Criminology*," Vol. II, No. 5, p. 779.

atmosphere to which they could react well; than they would be, if those years were spent in and out of courts and penal institutions. Their anti-social tendencies and truculence would be far less when they reached middle life, after years in a home, and their influence on young incomers would not then be markedly detrimental. The damage to the young from association with older criminals is that the older criminal brings to the younger stories of success and adventure and plausible schemes appealing to his cupidity. We cannot imagine young defectives coming among older ones who left criminality perforce when they were adolescent as encountering a deleterious influence at all comparable with that which obtains wherever an old offender or tramp, fresh from the road, is alone and idle with a young offender.

The potential recidivist is the youth of either sex who is demonstrably defective and who has a criminal record or tendencies. Apparently the next step in the extension of classification of delinquents is the segregation of these potential recidivists where they may be treated according to the needs of their condition and be taught and trained to earn an honest living in the custody of the state, thus preserving their self-respect. By this means their full development into social parasites and the propagation of their kind are prevented. Moreover, the community is rid of a costly menace and becomes possessed of a small earner, and the law ceases to punish one who is not wholly responsible. No less an authority than Professor Henderson has said: "The next step seems to be the final segregation of the incapable in an environment suitable to their condition."

According to the findings at the Massachusetts Reformatory 25% of criminals are mentally defective. About 75% then of prisoners are to be regarded as of competent mentality and fully responsible, or only subnormal. The reflex effect of the segregation of the defectives on the larger number of responsible prisoners is not to be overlooked. In a prison community which includes both classes any relaxation of requirements in favor of a defective marks him as such or opens the way for the damaging criticism of the administration that partiality is shown. When the defectives are segregated no such occasion will remain for invidious discrimination.

Again the reflex effect on the fully responsible prisoners of the knowledge that their fortunes are not at the lowest ebb, that there is a place to which irresponsible offenders are committed indefinitely can but act as a deterrent. The realization on the part of any offender that an exhibition of a lack of self-control might precipitate an official examina-

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tion into his capability of good conduct could hardly fail to act as a strong and a salutary stimulus to good efforts.

The experience of the foremost authorities in the education and treatment of the feeble-minded of institution grade without pronounced criminal tendencies has been that these subjects of lower grade of intellectuality, of inferior physical equipment and of much younger age than the class under consideration, can be trained to be partially, and in some cases approximately self-supporting.¹⁰ From this fact it is a fair expectation that the inmates of a colony of defectives would be self-supporting since they are older, better equipped for industry and would remain for a longer period individually in the institution.

Two imperative prerequisites to the successful realization of this plan are, (1) the demonstration and segregation of defective delinquents while young, i. e., as soon as criminal tendencies appear; and (2) the absolute physical segregation of the class under commitment.

In conclusion three points are to be noted: (1) among offenders one class, i. e., "Defectives," older or younger, are of limited responsibility these should not be sentenced with fully responsible offenders. (2) Members of this class may be differentiated. (3) They should be differentiated and segregated for a long continued training specially adapted to their needs in a custodial, industrial institution or colony of which the hospital features are prominent.¹¹

¹⁰Report of the "Indiana School for Feeble-Minded Youth." Report of the "Massachusetts School for Feeble-Minded Youth, 1905."

¹¹Dr. Daniel Phelan, Proceedings American Prison Association, 1910, p. 379.

THE SCIENTIFIC POLICE.¹

SALVATORE OTTOLENGHI,

Professor of Legal Medicine at the University of Rome and Director of
the School of Scientific Police.

Every citizen who is interested in the progress of society acknowledges that, in civilized countries, the police is entrusted with a noble task, which fact is reflected by the science whose aim it is to raise the efficiency of this powerful weapon of social defense. Physicians by whose teaching of hygiene society had been enabled to prevent physical evils to a large extent, felt very much flattered when, having taken up the study of police problems they were asked to assume certain responsibilities in questions of moral hygiene.

Since 1894, when I first tried to introduce a really scientific system into the police by following the inspirations of my master, Cesare Lombroso, I have demonstrated the function of criminal anthropology in such a system. The school of scientific police, founded through my initiative by the secretary of the interior, took its inspiration mainly from the principles of criminal anthropology.²

Since then the works on scientific police have been increasing rapidly; other schools have been established and new departments of police have been created. We must admit, however, that many either have not understood, or have not followed the scientific biological direction essential to a scientific police. Let us, above all, agree on the program and the function of a scientific police.

The technical function of judicial police is an important part of it. It requires the application of scientific methods of describing individuals, taking their photographs and finger prints, reproducing criminal local inquests, and for picking up the tracks of criminals. It comprises the Bertillon system, numerous chapters of legal medicine, and judicial photography. This technical side is only a part of the police function. Bertillon, whose system already existed in 1884, did not think then that he had created the scientific police.

I have always considered it my duty to speak of scientific police as Lombroso conceived it in opposition to the empirical system which is

¹Translated by Dr. Victor von Borosini, Chicago.

²S. Ottolenghi: *L'insegnamento della Polizia scientifica*. 1895 Sienna. *La police scientifique en Italie*. (Archive anthrop. Crimin., 1905). *Prospetti sinottici di Polizia scientifica*, Roma 1908, p. 250. *Trattato di Polizia scientifica*. I Vol. *Identificazione figura*. Milano Societa editrice libraria, 1910, pp. 410.

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in vogue at present. I not only wanted to apply certain new methods of identification, but, for three reasons, I urged the adoption of the new system; (1) to introduce a scientific method, based on investigation, in all the departments of the police. Every preventive and repressive measure ought to be based upon an actual and profound knowledge of normal, and of criminal men especially. Each branch of the police administration should adopt the method, founded upon investigation, i. e., nothing else but the application of Galilei's experimental, objective and rational method, which made experimental science possible. By extending this method to the study of moral evils, modern psychology, psychiatry and anthropology were created. This method, if applied to the police, would serve as a safeguard against errors of any kind. It is the most reliable way to discover the truth. (2) To seek the support of biology, psychology and criminal anthropology for investigations; i. e., to reckon with natural laws when we investigate, cross examine and report on facts. (3) To rest all police work on the thorough knowledge of man, especially of the criminal type, and to make use of the teachings of anthropology and psychology for the better prevention and suppression of crimes and for the discovery and more efficient supervision of criminals.

The knowledge of the nature of delinquent men will necessarily induce the police and society to adopt a more humane method for fighting criminality. This can be done by employing the best methods recognized by modern pedagogy in the treatment of minors: those methods which have triumphed in the treatment of the insane (Pinel) and have proved a marked success in animal breeding and even the taming of wild beasts.

By studying the individual in his relations to environment, criminal anthropology has taught us that a great many have become criminals through the surroundings in which they were obliged to live. If these conditions are considered and criminals are treated kindly, they may lose their dangerous characteristics. We have learned, besides, that if we treat a criminal humanely and as a friend, he can be better watched; his guilt, if he is guilty, can be more easily established, and his nature on the whole can be appreciated with greater precision. Criminal anthropology and sociology learned not from books, but from living beings, teach the official the rules to be observed for discovering the nature of the human mind, for appreciating the particular danger of a criminal to society, and for discovering the participants in the commission of criminal acts. Anthropology and psychology inform us about the nature of a criminal, enable his identification, and tell us how to

treat him. The psychology of the delinquent gives the officer a cue to his character, which renders him competent to introduce radical changes while enforcing the laws. The present method irritates rather than tames the human animal by developing ideas of persecution, thus increasing in an incredible way the world's cruelty. The knowledge of normal and criminal psychology must convince responsible superior police officers that the whole force ought to be inspired by humanitarian sentiments, by moderation, and by a certain kindness even towards the worst specimens of society, in order to do really efficient work.

The scientific method, with its rules adopted from experimental science, which in turn is inspired by the modern knowledge of mental phenomena must—and this is really the new pedagogy of scientific police—teach the officers and the judges how to observe, to reason, and to be absolutely impartial in investigations and reports. Besides it must teach the careful preparation of local inquests, investigations as to the accused's character, and the testimony of witnesses, all of which are useful means to discover the truth, rather than the opposite. The application of this method which means a real reform of the police, was first introduced in Italy, where Lombroso founded criminal anthropology, where the phenomena of the mind were examined by the most thorough methods, and where Galilei's method of investigation originated. The method can of course not be introduced by an order of a cabinet minister. Its effect is a remodeling of the whole department, not only in culture, but also in education. Our school, the only one in the world at present, accomplishes this high purpose.

Which method must we follow to obtain such results? The anthropological method of investigation studies the criminal type in prisons first, then in police stations. The method is not beyond the understanding of police officers of average education. It does not require thorough anthropological nor psychological studies. It is to Lombroso's everlasting credit that he applied the experimental method to the study of the delinquents in prison and in liberty in scientific laboratories. It is astonishing how the prisoner who serves his term, willingly submits to anthropo-psychological examinations, and how he discloses his nature. Some (Reiss in Lausanne e. g.) maintain that such conditions are not normal. Quite the contrary. The prisoner under a minute but courteous examination, questioned humanely and kindly even, as to his most secret psychological phenomena, reveals himself and his mental development and shows how great a menace he is to society. The examination takes place in the following way: It begins with the physical examination, similar to the one needed for a description, which is to

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ascertain anomalies and characteristics of the delinquent's nature, and the very interesting marks of his life, like certain traumatic scars (from falls or wounds) or certain tattoos. The examination of the wrinkles, and of the contractions of facial muscles, will disclose even the slightest mimic reaction and special mental manifestations. Next comes the psychological examination as to his intelligence, his senses, and his volitional attitude by appropriate questions suggested by the special case, which ought to furnish a good opportunity for the manifestation of desires, impressions and aspirations of the constantly observed subject, especially while telling the story of his life and during his self-defense. A systematic, biographical sketch with information about the behavior of the criminal in prison, and outside during military service, in school, and reformatories, as an apprentice, and in the family circle completes the information. Thus our dangerous criminals are studied in prison just as we study the sick in hospitals. By these means we transform the prison into a place of study and observation, in which the prisoner takes an active part, compensating society in this way for what is done for him. An official, who acts according to these rules, will get a real knowledge of criminals, which, once the method is acquired, will be completed by observing the delinquent at liberty, in his daily fight against society and the authority of the police. Observations made on delinquents in prison can immediately be used by the prison authorities, and later by the police, charged with watching the man, and preventing him from becoming a backslider. Long explanations are not needed to show the usefulness of applying the method by the police for watching and hunting up of criminals, for getting informations, for questioning and for local inquests. As an example, let me describe the biographical card for an accused person, introduced in Italy in 1903, which serves as the basis for every measure taken in criminal cases. It contains the personal, physical, and psychological description, how dangerous a man he is, his ability to work and the most important facts of his life. A complete card cannot, of course, be filled out during one examination, but later different officials who know the man, will furnish impartial additional information for the judge. Thus the card is a documentary index to the whole history of the person in the criminal records. In questioning the official again has an opportunity to apply to a large extent his knowledge of psychology, while he watches with keen interest the facial expression, in order to detect his most secret emotions, to discover the most cunning dissimulations. The anthropo-psychological method will be widely used in local inquests, where the official must not only be expert in the technic of photography and of taking and recogniz-

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ing finger prints, but also a keen observer. Thus he will increase his usefulness. He should further be absolutely impartial and rigorous in his report, which ought to be complete, logical and true, so that they may serve as a most important document for judicial instruction.

What has Italy done so far? Italy is the only country with an official school of scientific police for all the departments connected with the police. My course on the scientific police, given at the University of Sienna from 1896 to 1901 was, by order of the Secretary of the Interior, given in Rome after 1902 for superior officers of the police. The course was part of the curriculum of a school started in 1903 with a complete number of studies for students designated to become chiefs of police. They must live for four months at the school, and give proof of having profited by their studies. Besides description (Bertillon system and dactyloscopy) and legal photography, the principal courses consist in judicial investigations and applied anthropology and psychology. Both of the latter are taught according to the above mentioned principles, resulting in a complete reform in police methods. The course is given with the help of convicts in the prison, in the proximity of which the school is located. The prisoners are introduced during the lecture, and are questioned and examined minutely in presence of the class. The delinquent almost invariably understands that he serves as object lesson, and voluntarily helps by giving all the more important information. He does not shrink from showing his mind and his desires to those who treat him kindly. The new officials learn above all in our school to treat the prisoners well; they see that kind treatment is the first step towards making the criminal less dangerous, towards winning his confidence, and thus being able to exercise a beneficent watch over him, which widely differs from persecution. Up to the present time we have given twelve courses, attended by 650 officials besides lawyers and graduates of the Technical Institute. A more elementary course of scientific police is given to pupils of the school of carabinieri. The police school has a laboratory for research work and demonstrations and a criminal museum. The laboratory, besides being used for school purposes, serves for investigations by the judicial police.

The penal and penitentiary functions in civilized countries are increasing and with the tendency towards transforming prisons into workhouses and reformatories, the reform of the police functions, according to the trend of things in Italy, is of importance in every country for the safety of its citizens and for humanity's sake.

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VICTOR VON BOROSINI.

I was asked last year to translate an article written by Professor Salvatore Ottolenghi on the School of Scientific Police at Rome. It was extremely difficult to follow the learned professor's arguments and reasoning, but evidently something absolutely new was being tried in the eternal city. It seemed that the Roman experiment deserved a more intimate study. As I had to be in the capital of Italy last summer, I made a special effort to spend my early morning hours at the school, where I met with the kindest reception, not only by the director and the staff, but also by the pupils. Moreover, through Professor Ottolenghi's kindness, I got the permission to visit prisons, reformatories, police stations and other institutions in and around Rome and Naples. Being for weeks in daily contact with the teachers and students, I was able to form an opinion on the practical results of the teaching and the influence of the teachers on their pupils. It has rarely been my privilege to meet a group of students who were as enthusiastic about the theoretical and practical side of their work, and who at the same time, had such a high conception of the great responsibility of their future work as police commissioners, as the men in the school in Rome.

Professor Ottolenghi is an Italian alienist of very high standing in his science. His master was Cesare Lombroso, with whom he studied in Turin, and whose theories, though slightly modified, are the guiding principles of the school. Ottolenghi initiated a course in applied psychology, criminal anthropology and the task of the public police at the University of Sienna in 1896. He continued his work in the Tuscan city until 1901, when the authorities in Rome became interested in the possibilities of the course and promoted him to a professorship in Rome, where he continued his teaching. The police administration of Italy is placed in the hands of the secretary of the interior. The honorable Giolitti was at the head of the department at that time and the director of the bureau of public safety was Signor Leonardi. Both men rendered most valuable assistance to the school by putting at its disposition all the resources of the capital. The lectures are given at the prison of Regina Coeli, where over 1500 prisoners are serving time, where others are kept pending trial, and which serves as an exchange for hundreds of men and women who every year are, for disciplinary or other reasons, transferred to other prisons or labor colonies. Hence there is a wealth of material which can be used for school purposes. The secretary of

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the interior soon made the course obligatory for police commissioners, who, having successfully passed their civil service examination, served for one year on probation before they could be finally appointed. The institution has grown very rapidly. Every progress made in scientific police work was tried in Rome and if promising success, was incorporated in the curriculum of the school. Here Italy's service of identification is centralized. It can be said without exaggeration, that the brains of the Italian police administration lies in the school of Regina Coeli. From all over Italy lower police officers are sent for a period of several years to acquaint themselves with the different methods of taking finger prints, photographs and measurements.

Professor Ottolenghi explained at the Brussels Congress of Legal Medicine in 1910 his conception of a scientifically administered police, and it seems best to use his language freely in this place.

He contended that scientific principles had been applied in police work long before Bertillon had made public his system of ten measurements and two observations for identification. This method was undoubtedly the best for identifying persons, until the dactyloscopic method was developed by Mr. Henry of London, who was recently murdered in that city. Dactyloscopy is now substituted for the method of the French scientist. By applying scientific methods more generally, the police is going to become more efficient in preventing and fighting criminality. The sciences of anthropology, biology, and psychology inform and enlighten us on the physical and psychological characteristics of men, criminal sociology on the influence of the *milieu*, which is of the greatest consequence on human actions. The police commissioners need moreover a thorough legal training in order to know the extent and the limitation of their own rights and powers. The utmost circumspection should be used in ~~successfully~~ tracking and following up criminals from the very beginning immediately a crime has been detected. Therefore, investigations at local inquests should be made methodically in order that nothing which may throw a light on the case, may be overlooked. Reports to superior officers and to the investigating or directing magistrates should be absolutely reliable and impartial statements of facts; if, as is permissible, the police commissioner advances any theories of his own, he must expressly say so. The cross-questioning of witnesses and prisoners by a man who knows human psychology, will produce better results than have been obtained hitherto. He is able to look out for quite insignificant changes in the expression of a witness, as muscular contractions and change of color, which reveal psychological reactions. Criminal anthropology informs us of the danger of certain criminal

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types to society, and only this criterion ought to determine the length of a prison sentence, or permanent segregation, or the kind of supervision a criminal should submit to while at liberty. Such knowledge ought not to be gained exclusively from books, therefore police commissioners must be brought into personal contact with different types and study them just as the sick are studied in clinics and hospitals by medical students and physicians.

Having identified a prisoner, people would, as a rule, be in ignorance of his personal characteristics, had Lombroso not taught us to draw an inference as to the psychological characteristics of the individual from cranial types, scars and tattoos. The criminal's card record must, if it shall be of any practical use, contain information about his former life and surroundings, as well as about his former penal record. The police, in using scientific methods, is better able to protect society, especially by segregating criminal types in time and thus preventing their propagation. Such measures of moral hygiene are already extensively used in treating some cases of minors and incorrigible criminals. The treatment of prisoners by the police has undergone a revolution. Brutal force and coercive measures have been abandoned for quite as effective but more humanitarian methods which frequently win their good will and confidence.

That is the substance of Ottolenghi's paper, let us now review the practical working out of his theories at the school itself.

It is located not far from the Vatican, on the right side of the Tiber, and is practically a part of the prison of Regina Coeli. The school is a modern building, guarded by soldiers and turnkeys, constructed expressly for its purposes. On the first floor is the office of the director, a small museum of criminology, the Bertillon and dactyloscopic records and the Rogues' gallery. The museum is an imitation of many similar institutions in European capitals. It contains little of interest excepting Professor Ivanovici's marvelous work of making disfigured heads so lifelike that an identification is possible. The case records contain a complete collection of the cards of Italian criminals and a large number of European exchange cards, as foreign police departments send their cards directly to the school of scientific police, which is the distributing agency for Italy. A modern laboratory for the microscopical and chemical examination of sperma, traces of poison and blood is here installed, which is of the greatest value to the public prosecutor, the investigating magistrates and the Roman police. In the psychological laboratory the most up to date apparatus is used for registering psychological phe-

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nomena, but very simple instruments are used also, which police commissioners may have at their disposal later on.

The second story is used by the service of identification and dactyloscopy, it contains also the rooms of the staff, the library and the class room. The latter is an ampitheatre with antiquated, uncomfortable seats for the pupils, which would not be tolerated in a primary school. The benches may be right for boys of 12, but they are absolutely unfit for grown-up men. It seems extraordinary that the state which used excellent discretion in fitting out the school with the best modern science has produced, should have so little consideration for the comfort of the students. This is not only the case in the classroom. The men have no place in which to gather except the staircase and the hallway; the toilet rooms are of inferior type and there are no lavatories. Unfortunately, a good deal of spitting is done, the spittoons are not much used and cleanliness is rather marked by its absence. Moreover, the classroom is overcrowded; instead of two on a bench, we find often three sitting close together. The auditorium is fitted up so that cinematographic and stereopticon performances may be given. The criminals, who have consented to appear before the class for study purposes, are brought here directly from the prison.

The upper story is used by the photographic service and by the director of the service of identification.

On the teaching staff, in addition to the director of the school, Professor Ottolenghi, are his secretary, Dr. Falco, Dr. Gasti, who is at the head of the service of identification, Signor Ellero, who is in charge of the photographic department, and Signor Bertini, who lectures on police administration and legal matters. They are all picked men, and belong to the governmental service of police as police commissioners. The students are about 27 years of age. The civil service law requires them to have practiced law for at least two years. They have all served their time in the army, and many have a doctor's degree in law or sociology. Nevertheless, they are treated as schoolboys. They are addressed by the professors in the same way in which an Italian speaks to servants. Since they are mostly from Southern Italy, they are a highly excitable group, in which the spirit of youth breaks loose quite frequently. Though a number of more dignified and sober minded Northerners try to subdue and pacify them, they occasionally run wild and, as a punishment, the director keeps the whole class after hours at the school. The men receive about \$20.00 a month from the government; they live around town during their four months' period of instruction; a few are married. Between courses and in the evening I met them on the corso and we had

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many animated discussions about police matters in Italy and in the United States. I had their kind co-operation whenever I wanted to see either in Rome or Naples the actual working of the police at the station houses and in night patrol work, especially in the vice-infected or segregated districts of both cities.

Professor Ottolenghi gives four weekly lectures on criminal anthropology and psychology as applied to police work, so that the students become familiar with normal and criminal types of man. It is a theoretical and practical course, in which for study purposes use is made of the prisoners at Regina Coeli and of the inmates of the insane asylum, five blocks away. The school is temporarily transferred to the asylum, when demonstrations of insane patients take place. The art of interrogation and of observation is taught by employing life men as subjects. Their unconscious movements show instantly the reaction certain questions produce. Particular precautions are taken to avoid the suggestion of answers to witnesses or prisoners, though it is considered perfectly proper to assist the memory in different ways to make people recollect incidents or facts which they had forgotten. The evidence is weighed and discussed and the students learn to discriminate between essential and minor points. Racial, regional and somatic characteristics, together with psychological anomalies, determine the degree of danger of a criminal to society. During his demonstrations Professor Ottolenghi presents and questions different representatives of the same type. A small sum of money, which the prisoners or others who are tested may spend as they please, makes them willing to submit to the tests. This means, besides, a welcome break in the monotony of prison life; for here they can talk as much as they want, the more the better. I quote from Ottolenghi's introductory remarks to show how this part of the work is carried on:

"I am going to present to you to-day three prisoners guilty of crimes against persons. Let us first get all the available information about their age, occupation and birthplace. The age gives us the possibility to form an idea about the physical and psychological development of the delinquent; the occupation, about his habits; the birthplace about the *milieu* in which he has grown up. The two latter are highly important factors. As we know, for instance, that certain trades, like the butchers, predispose people to commit acts of violence, while in different parts of the country, thefts, sexual crimes or such of violence predominate. When we proceed to the bodily examination of the man, we must be mindful that certain external characteristics often correspond to a certain stage in the mental development. The physical examina-

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tion generally reveals to us some facts about the former life of the man, by finding scars, tattoos and the like. In addition we can ascertain whether he was and still is fit to do hard work or not. We finally arouse in the individual psychological reactions, by which the man's inner self may be revealed. By clever and rapid questioning he might be caught unaware and show certain feelings which he might wish to hide."

After this general introduction the personal and prison records of the man are read, whereupon he is introduced. He is asked to strip to the waist by removing his coat, necktie and shirt, for the physical examination. The students follow the examination with intense interest and frequently call Professor Ottolenghi's attention to some salient facts. They constantly interrupt and show their appreciation of directorial eloquence and science by generous applause. The students are often asked to take an active part in the personal examination and interrogation. Ottolenghi possesses a wonderful and highly dramatic power of making the prisoners talk. The students are later examined on the different cases and are classified according to their answers. The prisoner is treated with kindness and consideration, so as not to hurt his sensitiveness. He is invited to speak freely and without restraint of his family life, his experiences while at work and in the army, about his ideals and his conception of society. A murderer thus often expresses his disdain for a pickpocket, a safe blower for a common thief. Though the code of honor differs from the generally accepted standard, honor and *omertà* exist after their own fashion in the *mala vita*. The men had frequently served 10 to 13 years behind the bars, and showed the degrading and evil influence of prison life. I was highly impressed by the seeming inefficacy of the Italian prison system, which turns the men into automatic machines or moral and physical wrecks. The reader will easily see how valuable a practical course of the described kind is for future police commissioners, whose whole life is devoted to the work of preventing crimes and to hunting up criminals. I know from what the students told me that the school requires a good deal of study time for mastering alone the material presented by Ottolenghi in these two courses. The only danger in my mind is that Lombroso's theories could be accepted by the students as the absolute truth, and therefore be applied rather mechanically. If his theory about the delinquent were invulnerable, it would be an easy matter to suppress and prevent crime by the permanent segregation of criminal types. Ottolenghi takes special care to instruct students in scientific methods of investigation and in reporting properly the ascertained facts. The men are warned against remov-

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ing or touching anything which may lead to the detection of the perpetrator of the crime until the responsible magistrate has arrived at the scene of the crime.

Ottolenghi uses the Roman Morgue at the island of San Bernardino for his practical demonstrations of legal medicine. The different characteristic signs of death, outward signs of the causes of violent death, differences between homicides and suicides are taught. Thus police commissioners are enabled to form an adequate opinion on the discovery of a body as to the probable cause of his death, which must of course be substantiated by a rigorous medical post mortem. In the chemical department of the school a survey is given on the condition of the blood, caused by different forms of death, on the examination of sperma and other stains and on the contents of the stomach and intestines when poisoning is suspected. The idea is not to substitute police commissioners for expert physicians and chemists, but to give them a practical, though superficial knowledge of the methods used in scientific examinations. The whole school is occasionally invited to be present at inquests and investigations, and on such occasions the students are even asked to co-operate with the local authorities in finding the criminal. Many students voluntarily join the Roman police in their night patrol work in order to become familiar with the problems and the conditions of the capital.

The teaching of the science of identification is in the hands of Dr. Gasti. After a profound study of European methods he has worked out an individual dactyloscopic system for this service which is adopted for the whole kingdom. His course comprehends the description of the characteristics of a person, including special marks, like scars and tattoos, the teaching of exactly measuring the different parts of the body in accordance with Dr. Bertillon's method, and the proper classification of the cards thus obtained. Finally the taking of finger prints and the classification of the cards according to his own method. Dr. Gasti is absolutely convinced that the dactyloscopic method, together with a photograph, both profile and full face, of the accused, will in the future be substituted for the Bertillon system in the whole world, and for this reason he favors discontinuing the taking of measurements. The Italian dactyloscopic cards contain, besides the finger prints and the two photographs, a history of the criminal's life, surroundings, and specialty. According to the latter some of the cards are classified also. They are kept up to date; police and prison authorities regularly notify the central bureau at the school about the movements of the more dangerous criminals. In case a serious crime has been committed it is not very difficult

to find from the cards the men who at the time are not confined, and who among them is probably the responsible perpetrator of the crime. Prospective witnesses are taken to the bureau of identification to look over the pictures, and are asked to pick out the man they have seen where the criminal act was committed. The finger prints of suspected prisoners are sent to Rome, together with photographs of discovered finger prints in the place. At the school of scientific police they are photographed again, enlarged and compared with cards having similar indices. It might be of interest to know that cases have been not uncommon where even the identity of dead persons has been established by finger prints. Dr. Gasti and Dr. Falco give a more elementary course to exceptionally well qualified members of the Roman police force and prison guards on this very important subject of identification and taking finger prints. Thus all the prisons and each central police station through Italy have a couple of men able to take finger prints and classify them and also to find the dactyloscopic records according to a given index.

Instructions in photography includes the theoretical part, elementary courses and finally the application of the science for police purposes. Above all, the students learn to make use of light and shade in order to get the best pictures of scenes or of persons, which bring out characteristics. Again here the most modern and very common cameras are used, which may be found in every place. How photography can be used to detect falsified banknotes, counterfeit checks, erasures and the like, forms part of this course.

Being trained and experienced lawyers before they enter the service the men have naturally a good knowledge of law. But experience has shown that a course in the application and administration of police law is a necessary complement to the school's instruction. This is given by a man thoroughly acquainted with the matter. If the time is available other legal points are taken up from the point of view of the police, especially such as are related to the legal position and the duties of the police.

It is really an immense field which the police commissioners are asked to master in the short time of four months. I happened to be in Rome when examinations began; the entire conversation during the last days was about the questions they would be asked and the scientific knowledge Professor Ottolenghi expected them to have acquired.

How far-reaching the influence of the school is may be gathered from the fact that not a few police commissioners, stimulated by Ottolenghi, have contributed to the sociological and criminalistic literature of Italy a series of highly interesting monographs on conditions in their

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own special districts. The school has still other effects on the students. It brings in close touch for four months Italians from the high valleys of the Alps and from Sicily; absolutely different types, with very different standards. In daily contact they exchange their views and learn about certain regional particularities, which are extremely valuable from the point of view of a man who is to prevent and repress crime. The personal friendship established during the course facilitates their work later on. Instead of getting through a lot of red tape they might write a friendly informal letter, if they are in need of information. Masonry exists not only among thieves, but everywhere else among groups of people who are interested in the same work. The relations between Professor Ottolenghi and the students were quite unique. He commands their respect; he has infused in them an immense interest in the science he represents and they would do anything for him. They are exceedingly proud that an authority of international fame is their teacher. The reforming influence of the school on the Italian police is already noticeable. The progress is, the world over, undoubtedly along the lines of the Italian method, which enables commanding officers by the particular instruction, which they receive in Rome, to do more efficient, preventive work. Prevention is far cheaper to society and far more ethical and moral than repression.

INSANITY AND CRIMINAL RESPONSIBILITY.

EDWIN R. KEEDY.

(Report of Committee B of the Institute.¹)

Edwin R. Keedy (professor of law in Northwestern University), *Chairman*.
Adolf Meyer (professor of psychiatry in Johns Hopkins University), Baltimore.

Harold N. Moyer (physician), Chicago.

W. A. White (superintendent Government Hospital for the Insane), Washington.

William E. Mikell (professor of law in University of Pennsylvania), Philadelphia.

Albert C. Barnes (judge of the Superior Court), Chicago.

Walter Wheeler Cook (professor of law in University of Chicago).

Morton Prince (physician), Boston.

William S. Forrest (lawyer), Chicago.

In order that intelligent proposals may be made for legislation regarding the determination of the question of insanity in criminal cases and the methods of dealing with accused or convicted persons found to be insane, it is necessary to know the statutory provisions of the different states on this subject. For this purpose a collection of such laws in all the states, including the District of Columbia, has been prepared by this committee. As these laws are very diverse and occur under such widely different titles, it is difficult to have the assurance that none have been overlooked, though a strong effort was made to include all except those which have but a remote connection with the subject or have been declared unconstitutional. The last revision or compilation of the statutes of each state and the session laws published since the death of such revision or compilation were consulted. The topics covered are the following: (1) *test of responsibility*, (2) *insanity at time of trial and method of determining this*, (3) *commitment therefor*, (4) *verdict of jury when accused person is found to have been insane at the time of the commission of the offense charged*, (5) *method of commitment in such case*, (6) *method of discharge from insane hospital*. The extent to which these topics have been included in the legislation of the different states varies greatly, in some instances being very meager. The sections of the statutes have been arranged in the order indicated above. The titles of the sections follow those of the statute books, except in cases where no such titles occur or are very long or misleading. In these cases titles have been supplied, and indicated by brackets.

ALABAMA.

Presumption in favor of sanity; burden and measure of proof of insanity.—Every person over fourteen years of age charged with crime is presumed to be responsible for his acts, and the burden of proving that he is irresponsible is

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cast upon the accused. The defense of insanity in all criminal prosecutions shall be clearly proved to the reasonable satisfaction of the jury.—Criminal Code of 1907, sec. 7175.

Insanity must be specially pleaded as a defense for crime.—When the defense of insanity is set up in any criminal prosecution it must be by special plea, interposed at the time of arraignment and entered of record upon the docket of the court, which in substance shall be, "not guilty by reason of insanity." Such plea shall not preclude the usual plea of the general issue, which shall not, however, put in issue the question of the irresponsibility of the accused by reason of this alleged insanity, this question being triable only under the special plea.

Verdict when special plea interposed.—If it shall appear from the evidence that the defendant did the act charged as constituting the offense, but at the time of committing the act he was insane, the jury shall render a special verdict to the effect that the defendant is not guilty by reason of insanity; if the jury do not believe from the evidence that the defendant committed the act, or if they believe from the evidence that he is not guilty upon any other ground than his alleged insanity, they must return a general verdict of not guilty; otherwise, they must return a verdict of conviction.—Criminal Code of 1907, secs. 7176 and 7177.

Court orders to hospital defendant acquitted on account of insanity.—When a person has escaped indictment, or been acquitted of a criminal charge on the ground of insanity, the court, being informed by the jury, or otherwise, of the fact, must carefully inquire and ascertain whether his insanity in any degree continues, and, if it does, shall order him in safe custody, and to be sent to the hospital.

Powers of county courts and justices in misdemeanors.—Persons charged with misdemeanors, and acquitted on the ground of insanity, may be kept in custody and sent to the hospital in the same way as persons charged with crimes; and the county courts and justices of the peace shall have the same power in reference to persons charged before them with misdemeanors, as is bestowed upon the circuit courts in the two preceding sections.—Criminal Code of 1907, secs. 7181 and 7182.

Inquisition in certain cases of felony; proceedings.—If any person charged with any felony be held in confinement under indictment, and the trial court shall have reasonable ground to doubt his sanity, the trial of such person for such offense shall be suspended until the jury shall inquire into the fact of such sanity, such jury to be impaneled from the regular jurors in attendance for the week or from a special venire, as the court may direct. If the jury shall find the accused sane at the time of their verdict, they shall make no other inquiry, and the trial in chief shall proceed. If they find that he is insane at that time, the court shall make an order committing him to an insane hospital, where he must remain until he is restored to his right mind. When the superintendent of the hospital shall be of opinion that such person is so restored he shall forthwith, in writing, inform the judge and sheriff of such court of the fact, whereupon such person must be remanded to prison on an order of such judge, and the criminal proceedings resumed. In no event shall such person be set at large so long as such prosecution is pending, or so long as he continues to be insane.—Criminal Code of 1907, sec. 7178.

Inquisition upon alleged insane prisoner; further proceedings.—If any person in confinement, under indictment, or for want of bail for good behavior, or for keeping the peace, or appearing as a witness, or in consequence of any summary conviction, or by an order of any justice, appears to be insane, the judge of any court of record of the county where he is confined must institute a careful investigation, call a respectable physician and other credible witnesses, and, if he deems it necessary, may call a jury, and for that purpose he is empowered to compel attendance of witnesses and jurors; and if it be satisfactorily proved that the person is insane, the judge may discharge him from imprisonment and order his safe custody and removal to the hospital, where he must remain until restored to his right mind; and then, if the judge shall have so directed, the superintendent must inform the judge and sheriff, whereupon the person must

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be remanded to prison, and criminal proceedings be resumed, or he be otherwise discharged.—Criminal Code of 1907, sec. 7180.

Habeas Corpus for the release of insane persons confined.—Any person confined as insane may prosecute a writ of *habeas corpus* as provided in this chapter; and if the judge, or the jury, when the petitioner demands the issues arising to be tried by a jury, shall decide at the hearing that the person is insane, such decision does not bar a second application alleging that such person has been restored to sanity.—Criminal Code of 1907, sec. 7009.

ARIZONA.

Sections 1147-1153 of the Penal Code of 1901, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

Acquittal on ground of insanity.—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the territorial insane asylum. If the jury find the defendant sane, he must be discharged.—Penal Code of 1901, sec. 982.

ARKANSAS.

Persons capable of committing crimes.—A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged.

A person who becomes insane or lunatic after the commission of a crime or misdemeanor shall not be tried for the offense during the insanity or lunacy.

A person shall be considered of sound mind who is neither an idiot or a lunatic, or affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.—Kirby's Digest of the Stat., 1904, secs. 1550-1552.

[Insanity at time of trial.]—If the court shall be of the opinion that there are reasonable grounds to believe that the defendant is insane, all proceedings in the trial shall be postponed until the jury be impaneled to inquire whether the defendant is of unsound mind, and if the jury shall find that he is of unsound mind the court shall direct that he be kept in prison, or conveyed by the sheriff to the lunatic asylum, and there kept in custody by the officers thereof until he is restored, when he shall be returned to the sheriff, on demand, to be received by him to the jail of the county.—Kirby's Digest of the Stat., 1904, sec. 2277.

Verdict when acquitted for insanity.—If the defense be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict.—Kirby's Digest of the Stat., 1904, sec. 2418.

[Admission to Asylum.]—Any person admitted to the said asylum under the provisions of this act, shall be there and then kept until restored to reason, which shall be ascertained as in case of other insane persons in said asylum.

How discharged.—When any person confined in said asylum under the provisions of this act shall be ascertained to be restored to reason, it shall be the duty of the said superintendent to give notice thereof to the sheriff of the county in which the indictment or presentment against such person is pending, and said sheriff shall forthwith proceed to said asylum and take such person into his custody, and convey him to the jail of said county, or hold him in custody until admitted to bail or otherwise discharged according to law.—Kirby's Digest of the Stat., 1904, secs. 4206 and 4207.

Classification of insane persons.—All persons found to be insane, for whom application for admission to the state insane asylum shall be made in compliance with the provisions of this chapter, shall be classified as "acute," "chronic,"

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"probably incurable," or "incurable," such classifications to be determined by the duration of the disease and such complications as are known to render recovery doubtful or impossible. All cases of less than one year's duration from first recognized symptoms of insanity, shall be classified as "acute;" all cases over one year's duration shall be classified as "chronic;" all cases complicated with epilepsy, original imbecility or feeble mindedness, deformities of skull from injuries, old age or general paralysis, shall be classified as "probably incurable;" and all other cases shall be classified as "incurable;" provided, that no person of either classification, whether curable or not, and whether the imbecility or insanity be idiotic or congenital or not, shall be refused admission as long as there is unoccupied room for patients in the asylum.—Kirby's Digest of the Stat., 1904, sec. 4209.

CALIFORNIA.

Insane persons cannot be tried or punished.—A person cannot be tried, adjudged to punishment, or punished for a public offense while he is insane.

Doubts as to sanity of defendant; how determined.—When an action is called for trial, or at any time during the trial, or when the defendant is brought up for judgment on conviction, if a doubt arise as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial or the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity.

Order of trial of question of insanity.—The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case, and offer evidence in support of the allegation of insanity;
2. The counsel for the people may then open their case and offer evidence in support thereof;
3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause;
4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the jury;
5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately; in other cases the argument may be restricted to one counsel on each side;
6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

Verdict of the jury as to sanity, and proceedings thereon.—If the jury finds the defendant sane, the trial must proceed, or judgment be pronounced, as the case may be. If the jury finds the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be in the meantime committed by the sheriff to a state hospital for the care and treatment of the insane, and that upon his becoming sane he be redelivered to the sheriff.

If defendant is committed, it exonerates bail.—The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

Defendant detained in asylum until sane.—If the defendant is received into the state hospital he must be detained there until he becomes sane. When he becomes sane, the superintendent must certify that fact to the sheriff and district attorney of the county. The sheriff must thereupon, without delay, bring the defendant from the state hospital and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.—Annotated Penal Code, 1901, secs. 1367-1372.

Proceedings on acquittal on ground of insanity.—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be

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summoned from the jury list of the county to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.—Supplement to Annotated Penal Code, 1902, sec. 1167, p. 41.

COLORADO.

Lunatics; not to be convicted for act when insane.—A lunatic or insane person without lucid intervals shall not be found guilty of any crime or misdemeanor with which he may be charged; *provided*, the act so charged as criminal shall have been committed in the condition of insanity.

Idiot not guilty.—An idiot shall not be found guilty or punished for any crime or misdemeanor with which he or she may be charged.—Revised Statutes, 1908, secs. 1612-1613.

Notice of inquest by citation; inquest of lunatic charged with crime.—No inquest shall be had as to the lunacy of any person charged with a criminal offense until a like notice has been given to the district attorney or other officer charged by law to prosecute such offense.—Revised Statutes, 1908, sec. 4128 (portion of section).

Lunacy after crime committed; after judgment; inquest.—A person that becomes lunatic or insane after the commission of a crime or misdemeanor ought not to be tried for the offense during the continuance of the lunacy or insanity. If, after verdict of guilty and before judgment pronounced, such person becomes lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue, and if after judgment and before execution of the sentence, such person becomes lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the insanity or lunacy. In all these cases it shall be the duty of the court to impanel a jury to try the question whether the accused be at the time of impaneling insane or lunatic.—Revised Statutes of 1908, sec. 1614.

Discharge of person restored to reason.—If any person confined in the state insane asylum shall be restored to reason, the superintendent thereof shall discharge such person from said confinement and shall forthwith transmit to the judge of the county court, by which said patient was adjudged insane, a notice in writing setting forth that such lunatic or insane person has been restored to reason, and has been discharged and the said superintendent shall have the further power to issue a probationary discharge whenever he believes the same to be for the best interest of any patient, under his control.—Revised Statutes, 1908, sec. 4130 (portion of section).

CONNECTICUT.

Examination of accused who appear to be insane.—When any person committed for trial to the county jail on binding over process, bench warrant, or appeal, shall, at the time of such commitment, or thereafter and before trial, appear to be insane, the sheriff of the county in which said jail is located may make application to a judge of the superior court, and, after hearing upon said application, notice of said hearing having been given to the state's attorney, said judge may, if it appear to him to be advisable, appoint three reputable physicians to examine as to the mental condition of the person so committed; and upon the return to said judge of a certificate by said physicians, stating the insanity of said person, said sheriff shall, upon the order of said judge, transfer said person so committed to the Connecticut hospital for the insane at Middletown, in this state, for confinement, support, and treatment, until the time of his trial. The expense of such examination, confinement, support, and treatment, shall be taxed as a part of the costs in the prosecution against said person, and paid as costs in criminal prosecutions in the superior court.

Disposition of accused acquitted on the ground of insanity.—Any superior

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court, criminal court of common pleas, city court, or police court in this state, before which any person shall be tried on any criminal charge, and acquitted on the ground of insanity or dementia, may order such person to be confined in the Connecticut hospital for the insane for such time as such court shall direct, unless some person shall undertake before said court, and give bond to the state conditioned, to confine such person in such manner as such court shall order; and said court shall appoint an overseer to such person, if he have any estate, with the same powers and duties as conservators appointed by courts of probate, such overseer giving suitable bond to the state, conditioned for the faithful performance of his trust; and if such person have no estate, and belongs to any town in this state, the expense of his confinement, support, and treatment shall be paid by such town and the state, in the same manner as is by law provided in the case of pauper patients committed by courts of probate; and if such person have no estate and does not belong to any town in this state, such expense shall be paid by the state.

Release of person sentenced under preceding section.—Any person who has been tried on any criminal charge, and acquitted on the ground of insanity or dementia, and confined in the Connecticut hospital for the insane, may petition, or the officers of said institution may petition, the superior court of the county in which he is confined for his enlargement, and the petition shall be served like civil process on the selectmen of the town to which he belongs, and upon the person, if any, upon whom the offense was charged to have been committed, and upon the state's attorney of the county in which the trial was had, and said court shall make such order as to his disposal as it shall deem proper, and said state's attorney shall appear and represent the state on such application; and if such person so confined shall be unable to defray the expenses of said petition, the court before which the same is heard may tax the same against the state as in criminal cases.

Disposition of insane person upon expiration of term.—When any person shall have been tried on any criminal charge and acquitted on the ground of insanity or dementia, and shall have been confined in the Connecticut hospital for the insane for any specific term by the order of the court before which such trial was had, and shall, at the expiration of such term, still be suffering from insanity or dementia, the superintendent of said hospital shall certify said facts to the state's attorney for the county wherein such trial was had, and said state's attorney shall thereupon procure from said court, and said court is hereby authorized and empowered to issue an order for the further confinement of such person in said hospital until he recovers from such insanity or dementia, and the clerk of said court shall thereupon transmit to said superintendent a new warrant of commitment based upon said order; the expense of such further confinement, support, and treatment shall be paid out of the estate of such insane person, or, if he have no estate, such expense shall be paid by the town of which such person belongs; and if he belongs to no town in this state such expense shall be paid by the state.—General Statutes (Revision of 1902), secs. 1472-1475.

Petition for release of person acquitted as insane.—Any person who has been tried on any criminal charge, and acquitted on the ground of insanity or dementia, and confined in the Connecticut hospital for the insane, may petition, or the officers of said institution may petition, the superior court of the county in which he is confined for his release, and the petition shall be served like civil process on the selectmen of the town to which he belongs, and upon the person, if any, upon whom the offense was charged to have been committed, and upon the state's attorney of the county in which the trial was had, and said court shall make such order as to his disposal as it shall deem proper; and said state's attorney shall appear and be heard on such application, and if such person so confined shall be unable to defray the expenses of such petition, the court before which the same is heard may tax the expenses of such petition against the state, as in criminal cases.—General Statutes, 1902, sec. 2780.

Insane persons entitled to writ of habeas corpus.—All insane persons confined in an asylum in this state shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be determined by the court

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or judge issuing such writ, and, if the court or judge before whom such case is brought shall decide that the person is insane, such decision shall be no bar to the issuing of such writ a second time, if it shall be claimed that such person has been restored to reason. Said writ may be applied for by said insane person or on his behalf by any relative, friend, or person interested in his welfare.

Persons charged with crime not affected.—The foregoing provisions of this title shall not extend to nor affect in any way the cases of persons convicted of or charged with crime.—General Statutes (Revision of 1902), secs. 2760-2761.

DELAWARE

An act in relation to insane persons.—If upon the trial of any person upon any indictment in the court of oyer and terminer, or in the court of general sessions of the peace and jail delivery of this state, the defense of insanity shall be made and established to the satisfaction of the jury empaneled on said trial, and the fact charged shall be proved, it shall be the duty of the jury to return a verdict of "not guilty by reason of insanity," and upon the rendition of such verdict, the court before which the issue shall have been tried may, upon motion of the attorney-general, order that the person so acquitted shall forthwith be committed by the sheriff to the keeper of the almshouse of the county wherein the case was tried, or of the county of the residence of said insane person; or the court may order such person to be placed at any lunatic asylum or institution for insane persons in the United States. For this purpose the said court may appoint a trustee, whose duty it shall be to contract with any such asylum or institution for the admission and support of such insane person. The expenses of the removal of such insane person, and of his admission into and support at such asylum or institution, shall be borne by the trustee of the poor of the county where the act charged was committed, or of the county of such insane person's residence; but if any such insane person shall have any real or personal estate, said trustee of the poor may have for the expenses and charges so incurred as aforesaid, the same remedy as is provided in section 22, of chapter 48, of the Revised Statutes of this State in the case of insane persons supported in the county almshouse.

The court of general sessions of the peace and jail delivery of the county wherein such case shall have been tried may order that such insane person charged and acquitted as aforesaid shall be set at large whenever they shall be satisfied that the public safety will not be thereby endangered, or may order such person to be removed from any such asylum or institution to the almshouse of the county where he resided at the time of the commission of the act charged in the indictment, or of the county where the act charged was committed.—Revised Code of 1852 as amended 1893, chap. 397.

DISTRICT OF COLUMBIA

Insane criminals.—When any person tried upon an indictment or information for an offense is acquitted on the sole ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict; and whenever a person is indicted or is charged by an information for an offense and before trial or after a verdict of guilty *prima facie* evidence is submitted to the court that the accused is then insane, the court may cause a jury to be impaneled from the jurors then in attendance on the court or, if the regular jurors have been discharged, may cause a sufficient number of jurors to be drawn to inquire into the insanity of the accused, and said inquiry shall be conducted in the presence and under the direction of the court. If the jury shall find the accused to be then insane, or if an accused person shall be acquitted by the jury solely on the ground of insanity, the court may certify the fact to the Secretary of the Interior, who may order such person to be confined in the hospital for the insane, and said person and his estate shall be charged with the expense of his support in said hospital. The person whose sanity is in question shall be entitled to his bill of exceptions and an appeal, as in other cases.—Code of Law, 1910, sec. 927.

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FLORIDA

Acquitted for cause of insanity.—When a person tried for an offense shall be acquitted by the jury for the cause of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause, and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the people, the court shall order him to be committed to jail or otherwise to be cared for as an insane person, or may give him into the care of his friends, on their giving satisfactory security for the proper care and protection of such person; otherwise he shall be discharged.—General Statutes of 1906, sec. 3992.

GEORGIA

Persons who are considered of sound mind.—A person shall be considered of sound mind who is neither an idiot, a lunatic, nor afflicted by insanity, or who has arrived at the age of fourteen years, or before that age if such person know the distinction between good and evil.—Code of 1911, vol. ii, sec. 33.

Lunatics.—A lunatic or person insane, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: Provided, the act so charged as criminal was committed in the condition of such lunacy or insanity; but if a lunatic has lucid intervals of understanding, he shall answer for what he does in those intervals as if he had no deficiency.—Code of 1911, vol. ii, sec. 35.

Insanity at trial.—No lunatic, or person afflicted with insanity, shall be tried, or put upon his trial, for any offense during the time he is afflicted with such lunacy or insanity, which shall be tried in the manner hereinbefore pointed where the plea of insanity at the time of trial is filed, and, on being found true, the prisoner shall be disposed of in like manner.—Code of 1911, vol. ii, sec. 978.

Plea of insanity, how tried.—Whenever the plea of insanity is filed, it shall be the duty of the court to cause the issue on that plea to be first tried by a special jury, and if found to be true, the court shall order the defendant to be delivered to the superintendent of the sanitarium, there to remain until discharged in the manner prescribed by law.

Criminals acquitted, how dealt with.—When a person who has been acquitted of a capital crime, on the ground of insanity, is committed to the sanitarium, he shall not be discharged thence, except by special act of the legislature. If the crime is not capital, he shall be discharged by warrant or order from the governor. If sentence is suspended on the ground of insanity, upon restoration to sanity the superintendent shall certify the fact to the presiding judge of the court where he was convicted.—Code of 1911, vol. ii, secs. 976 and 977.

IDAHO

Sections 8194-8200 of the Revised Code, 1908, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

Forms of general verdict.—When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity."—Revised Code of 1908, sec. 7919 (portion of section).

Acquittal for insanity—commitment to asylum.—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the prosecuting attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.—Revised Code of 1908, sec. 7934.

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ILLINOIS

Insanity.—A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: *Provided*, the act so charged as criminal shall have been committed in the condition of insanity.—Revised Statutes, 1909, chap. 38, part of sec. 284.

Becoming insane.—A person that becomes lunatic or insane after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the lunacy or insanity. If, after the verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after judgment and before execution of the sentence, such person become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all of these cases, it shall be the duty of the court to impanel a jury to try the question whether the accused be, at the time of impaneling, insane or lunatic.—Revised Statutes, 1909, ch. 38, sec. 285.

Verdict and commitment.—If, upon the trial of a person charged with crime, it shall appear from the evidence that the act was committed as charged, but that, at the time of committing the same, the person so charged was lunatic or insane, the jury shall so find by their verdict, and by their verdict shall further find whether such person has or has not entirely and permanently recovered from such lunacy or insanity; and in case the jury shall find such person has not entirely and permanently recovered from such lunacy or insanity, the court shall cause such person to be taken to a state hospital for the insane, and there kept in safety until he shall have fully and permanently recovered from such lunacy or insanity; but in case the jury shall find by their verdict that such person has entirely and permanently recovered from such lunacy or insanity, he shall be discharged from custody.—Revised Statutes, 1909, chap. 38, part of sec. 284.

Judge may order insane murderer, etc., to the asylum.—At any time after the said Illinois asylum for insane criminals shall be opened, for the reception of patients, when a person shall be acquitted on trial of the crime of murder, attempt at murder, rape, attempt at rape, highway robbery or arson, on the ground of insanity, the judge of the court in which such trial is had shall order his safe custody and removal to such asylum, where he shall remain until restored to his right mind and be adjudged by the medical superintendent thereof, and the board of commissioners of public charities a fit subject to be discharged.—Revised Statutes, 1909, chap. 23, sec. 87.

Entitled to habeas corpus.—Every person confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be decided at the hearing, and if the judge shall decide that the person is insane such decision shall be no bar to the issuing of the writ a second time whenever it shall be alleged that such person has been restored to reason; and if said person shall be adjudged sane, on presentation of a certified copy of said judgment to the county court where the inquest was had, such court shall rescind and set aside the judgment of insanity.—Revised Statutes, 1909, ch. 85, sec. 24.

Not to apply to persons in custody on criminal charge.—Nothing in this act shall be construed to apply to insane persons, or persons supposed to be insane, who are in custody on a criminal charge.—Revised Statutes, 1909, ch. 85, sec. 30.

INDIANA

Insanity defense—sentence.—After the passage of this act, if upon the trial of any male person accused of a felony the defense of insanity is interposed, whether upon a special plea or a general plea of not guilty, the court or jury trying said cause shall make a finding both as to the sanity of said defendant at the time so claimed and as to whether he committed the act as charged. And if it shall be found in favor of said defendant on such plea of insanity but against him as to the commission of the act as charged, he shall upon order of the court be committed to and confined in the Indiana colony for the insane criminals in like manner and on such conditions and for such terms as is now

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provided for by law for the confinement of insane criminals in a state hospital for the insane.—Acts of 1909, chap. 87, sec. 16½.

[*Habeas corpus*].—*Who may have writ.*—Every person restrained of his liberty under any pretense whatever, may prosecute a writ of *habeas corpus*, to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.—Burns' Revised Statutes, 1901, sec. 1120.

Habeas corpus.—Any person committed as insane may apply to the proper authorities for a writ of *habeas corpus*, and the question of insanity shall be decided at the hearing. An adverse decision shall not operate as a bar to the issuance of another writ: *Provided, however,* That writs of *habeas corpus* shall not issue oftener than once in every period of three months in such cases.—Burns' Revised Statutes, 1901, sec. 3239.

IOWA

Proceedings suspended.—If a defendant appears in any stage of the trial of a criminal prosecution, and a reasonable doubt arises as to his sanity, further proceedings must be suspended and a trial had upon that question.

Trial.—Such trial shall be conducted in all respects, so far as may be, as the prosecution itself would be, except the defendant shall hold the burden of proof, and first offer his evidence and have the opening and closing argument.

Discharge or commitment.—If the accused shall be found insane, no further proceedings shall be taken under the indictment until his reason is restored, and, if his discharge will endanger the public peace or safety, the court must order him committed to the department for the criminal insane at Anamosa until he becomes sane; but if found sane, the trial upon the indictment shall proceed, and the question of the then insanity of the accused cannot be raised therein.

Return to custody.—If the accused is committed to the department for the criminal insane, as soon as he becomes mentally restored, the person in charge shall at once give notice to the sheriff and county attorney of the proper county of such fact, and the sheriff, without delay, must receive and hold him in custody until he is brought to trial or judgment, as the case may be, or is legally discharged, the expense for conveying and returning him or any other, to be paid in the first instance by the county from which he is sent, but such county may recover the same from his estate, or a relative, or another county or municipal body bound to provide for or maintain him elsewhere, and the sheriff shall be allowed for his services the same fees as are allowed for conveying convicts to the penitentiary.—Code of 1897, secs. 5540-5543.

Acquittal on ground of insanity.—If the defense is insanity of the defendant, the jury must be instructed, if it acquits him on that ground, to state that fact in its verdict. The court may thereupon, if the defendant is in custody, and his discharge is found to be dangerous to the public peace and safety, order him committed to the insane hospital, or retained in custody, until he becomes sane.—Code of 1897, sec. 5414.

Discharge from hospital.—On the application of the relations or immediate friends of any patient in the hospital who is not cured, and who cannot be safely allowed to go at liberty, the commissioners of the county where such patient belongs, on making provisions for the care of such patient within the county as in other cases, may authorize his discharge therefrom; but no patient who may be under criminal charge or conviction shall be discharged without the order of the district court or judge, and notice to the county attorney of the proper county.—Code of 1897, sec. 2276.

Habeas corpus.—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be decided at the hearing. If the judge shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person has been restored to reason.—Code of 1897, sec. 2360.

KANSAS

Insanity at time of trial.—Whenever any person under indictment or infor-

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mation, and before or during the trial thereon, and before verdict is rendered, shall be found by the court in which such indictment or information is filed, or by a commission or another jury empaneled for the purpose of trying such question, to be insane, an idiot or an imbecile and unable to comprehend his position, and to make his defense, the court shall forthwith commit him to the state asylum for the dangerous insane for safe keeping and treatment; and such person shall be received and cared for at the said institution until he shall recover, when he shall be returned to the court from which he was received to be placed on trial upon said indictment or information.—Laws of Kansas, 1911, c. 299, s. 4.

Insanity at time of commission of wrongful act.—Whenever during the trial of any person on an indictment, or information, and evidence is introduced to prove that he was insane, an idiot or imbecile or of unsound mind at the time of the commission of the offense and such person shall be found to have been at the date of the offense alleged in said indictment or information, insane, an idiot, or an imbecile, and is acquitted on that ground, the jury or the court, as the case may be, shall so state in the verdict and in said case it shall be the duty of the jury to pass specially on the question of the sanity of the defendant, and the court shall thereupon, forthwith commit such person to the state asylum for the dangerous insane for safe keeping and treatment, and such person shall be received and cared for at said institution. No such person so acquitted shall be liberated therefrom, except upon the order of the court committing him thereto and until the superintendent of the said asylum for the dangerous insane shall certify in writing to such committing court that in his opinion such person is wholly recovered and that no person will be in danger by his discharge.—Laws of Kansas, 1911, c. 299, s. 5.

KENTUCKY

Trial of sanity of defendant—proceedings if insane.—If the court shall be of opinion that there are reasonable grounds to believe that the defendant is insane, all proceedings in the trial shall be postponed until a jury be impaneled to inquire whether the defendant is of unsound mind, and if the jury find that he is of unsound mind, the court shall direct that he be kept in prison or conveyed by the sheriff to the nearest lunatic asylum, and there kept in custody by the officers thereof until he be restored, when he shall be returned to the sheriff on demand, to be reconveyed by him to the jail of the county.—Criminal Code of Practice, 1900, s. 156.

Verdict and proceedings on plea of insanity.—If the defense be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict, and thereupon if the court, after hearing any testimony offered by the commonwealth or the defendant, be satisfied that he is insane at the time the verdict is rendered, it may order him to be taken to a lunatic asylum.—Criminal Code of Practice, 1900, s. 268.

NOTE: "Asylum" as a term of designation for institutions for the care of the insane has been changed to "hospital."—Acts of 1912, c. 85.

LOUISIANA.

Plea of insanity.—Whenever insanity shall be relied upon either as a defense or as a reason for defendant's not being presently tried, such insanity shall be set up as a separate and special plea, and shall be filed, tried and disposed of prior to any trial of the plea of not guilty, and no evidence of insanity shall be admissible upon the trial of the plea of not guilty.

[Report of commission].—Whenever any plea of insanity shall have been filed, the presiding judge shall at once notify in writing the coroner of the parish, the superintendent of the insane asylum at Jackson, and the superintendent of the insane asylum at Pineville. The said coroner and the said superintendents shall together form a commission of lunacy to inquire into the sanity of accused; provided that each of said superintendents may designate and require to act in his place on said commission any physician in the regular employ of the asylum. The commissioners, as soon as practicable after said notification, shall meet at the parish-seat, and proceed with the investigation into the sanity of the accused, and, for that purpose, shall have the right of

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free access to him at all reasonable times and shall have full power and authority to summon witnesses and to enforce their attendance. The findings of the commission or of a majority of its members shall, upon being filed in court, constitute the report of the commission of lunacy. If said report be that the accused is presently insane, or was insane at the time of the commission of the crime, he shall forthwith be committed to the asylum for the criminal insane, there to remain until discharged in due course of law. But if the report be that the accused is presently sane and was sane at the time of the commission of the crime, the trial of the plea of insanity shall be proceeded with as provided in this chapter. The commissioners shall serve without pay, but all the expenses incurred by them and all costs of conducting said investigation shall be paid by the parish and taxed as costs, in the same way as other criminal expenses.

[*Trial of plea*].—Every plea of insanity shall be triable by the judge without a jury, or by a jury of five, or by a jury of twelve, according as the charge in the indictment is triable, and the same number of jurors concurring shall be necessary to the finding of a verdict on this plea as would be necessary to a verdict on the charge in the indictment.

[*Finding and commitment*].—If upon the trial of the plea of present insanity the judge or the jury, as the case may be, shall find that the defendant is presently sane, he shall be committed to an asylum for the criminal insane, there to await trial until such time as his reason shall have been restored; provided that the district attorney having charge of the prosecution, whenever he believes the defendant no longer insane, may have the question of insanity again determined in the same manner in which it was originally determined.

[*Finding and Commitment*].—If upon the trial of the plea of insanity as a defense, the judge or the jury, as the case may be, shall find that the defendant was insane at the time of the commission of the crime, he shall be committed to an asylum for the criminal insane, there to remain until discharged in due course of law; provided that no person committed under the provisions of this Article shall be released otherwise than as pointed out in the next succeeding Article.

[*Discharge from asylum*].—Whenever it shall be alleged that any person committed to an asylum for the criminal insane, because insane at the time of the commission of the crime, has regained his reason, a rule to show why such person should not be released from said asylum shall be taken upon and tried contradictorily with the district attorney of the parish from which such person shall have been committed, which rule shall be tried by the judge, or by a jury of five, or by a jury of twelve, according as the charge in the indictment is triable, and the same number of jurors shall be necessary to the finding of sanity as would be necessary to a verdict on the charge in the indictment.

[*Review*].—No ruling of the court made on the trial of any plea of insanity shall, before sentence, be reviewable by any other court, either under its appellate or supervisory powers.—Proposed Code of Criminal Procedure, 1910, Arts. 292-298.

Authority of courts, when insanity is pleaded.—Whenever any person arrested to answer for any crime or misdemeanor, before any court of this state, shall be acquitted thereof by the jury, or shall not be indicted by the grand jury, by reason of the insanity or mental derangement of such person, and the discharge and going at large of such person shall be deemed by the court to be dangerous to the safety of the citizens or to the peace of the state, the court is authorized and empowered to commit such person to the State Insane Hospital or any similar institution in any parish within the jurisdiction of the court, there to be detained until he be restored to his right mind, or otherwise delivered by due course of law.

[*Duty of jury, when insanity is reason for acquittal*].—Whenever the jury, upon general issue of not guilty, shall acquit any person for the cause aforesaid, it shall be their duty, in giving their verdict of not guilty, to state that it was for such cause.—Revised Statutes, 1904, secs. 993 and 995.

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MAINE.

When a person, committed to a jail on a criminal charge pleads insanity, proceedings.—When a person is indicted for an offense, or is committed to jail on a charge thereof by a trial justice, or judge of a police or municipal court, any justice of the court before which he is to be tried, if a plea of insanity is made in court, or he is notified that it will be made, may, in vacation or term time, order such person into the care of the superintendent of either insane hospital, to be detained and observed by him until further order of court, that the truth or falsity of the plea may be ascertained. The superintendent of the hospital to which such person is committed shall, within the first three days of the term next after such commitment and within the first three days of each subsequent term so long as such person remains in his care, report to the judge of the court before which such person is to be tried, whether his longer detention is required for purposes of observation.

When grand jury omit to indict, or traverse jury acquit, on account of insanity of the accused, they shall so certify to court—how court shall dispose of such accused.—When the grand jury omit to find an indictment against any person arrested to answer for an offense, by reason of his insanity, they shall certify that fact to the court; and when a traverse jury, for the same reason, acquit any person indicted, they shall state that fact to the court when they return their verdict; and the court, by a precept stating the fact of insanity, may commit him to the insane department of the state prison or to either insane hospital; and any person so committed shall be discharged by the court having jurisdiction of the case only on satisfactory proof that his discharge will not endanger the peace and safety of the community; and when such person so discharged is on satisfactory proof again found insane and dangerous, any justice of the supreme judicial court may, by a precept stating the fact of his insanity, recommit him to the insane department of the state prison, or to either insane hospital.

How, and by whom, such person, so committed to the hospital, may be discharged—bond.—Any person so committed to an insane hospital may be discharged by any justice of the supreme judicial court, in term time or vacation, on satisfactory proof that his discharge will not endanger the peace and safety of the community; or such justice may, on application, commit him to the custody of any friend who will give bond to the judge of probate for the county of Kennebec, if such commitment was to the insane hospital at Augusta, or to the judge of probate for the county of Penobscot, if such commitment was to the insane hospital at Bangor, with sufficient sureties, approved by said judge of probate, conditioned for the safe keeping of such insane person, and the payment of all damages which any person may sustain by his acts. And when, on satisfactory proof, he is again found insane and dangerous, any justice of the supreme judicial court may, by a precept stating the fact of his insanity, recommit him to the insane hospital from which he was discharged.

Support at hospital.—The person so committed shall be there supported at his own expense, if he has sufficient means; otherwise, at the expense of the state.—Revised Statutes, 1903, c. 138, secs. 1-4.

Inmates of jails and persons under indictment may be committed to insane hospital.—Any inmates of county jails and persons under indictment becoming insane before final conviction may be committed to either insane hospital by any judge of the supreme judicial court, or judge of the superior court in the county where such person is to be tried, or the case is pending for observation, under such limitations as such judge may direct.—Laws of 1905, c. 104, sec. 8.

MARYLAND.

[Verdict in case of plea of insanity].—When any person indicted for a crime or misdemeanor shall allege insanity or lunacy in his defense, the jury impanelled to try such person shall find by their verdict whether such person was, at the time of the commission of the offense, or still is insane, lunatic, or otherwise.

[Commitment].—If the jury find by their verdict that such person was at the time of committing the offense and then is insane or lunatic, the court

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before which trial was had shall cause such person to be sent to the almshouse of the county or city in which such person resided at the time of the commission of such act, or to a hospital, or some other place better suited in the judgment of the court to the condition of such prisoner, there to be confined until he shall have recovered his reason and be discharged by due course of law. And any judge of the circuit court for any county where such person is detained or of the supreme bench of Baltimore city, as the case may be, may, upon *habeas corpus* proceedings, make any order, absolute or conditional, for the permanent or temporary discharge of the person upon satisfactory proof of permanent or temporary recovery.

[*Commitment when no indictment found*].—Where any person arrested for improper or disorderly conduct, or charged with any crime, offense or misdemeanor against whom no indictment has been found shall appear to the court or be alleged to be a lunatic or insane, the court shall cause a jury of twelve good and lawful men to be impanelled forthwith and shall charge said jury to inquire whether such person was at the time of the commission of the act complained of insane or lunatic and still is so; and if such jury shall find such person was, at the time of the commission of such act insane or lunatic and still is so, the court shall direct such person to be confined, as directed in the preceding section, at the expense of the county or city, as the case may be, until he shall have recovered and be discharged by due course of law.—Annotated Code, 1911, art. 59, secs. 4-6.

[*Release on habeas corpus at instance of lunacy commission*].—If in their judgment any person confined in any institution in this state as insane be not insane, the commission may, at any time, bring the matter to the attention of the state's attorney of Baltimore city, or the state's attorney of any of the respective counties of the state, whose duty it shall be to apply to the proper tribunal for the writ of *habeas corpus*, to the end that proper inquiry and investigation may be had at once as to the mental condition of such person; and if the court shall be of the opinion that such person is not insane, then the court shall discharge such person; but if the court shall determine that such person is insane, then the court shall order that such person be returned to the institution from which he has been taken under said writ of *habeas corpus*.—Annotated Code, 1911, art. 59, sec. 20.

MASSACHUSETTS.

Commitment of persons under indictment to a state insane hospital.—If a person under complaint or indictment for any crime is, at the time appointed for trial or sentence, or at any time prior thereto, found by the court to be insane or in such mental condition that his commitment to a hospital for the insane is necessary for the proper care or observation of such person pending the determination of his insanity, the court may commit him to a state hospital for the insane under such limitations as it may order. The court may, in its discretion, employ one or more experts in insanity, or other physicians qualified as provided in section thirty-two, to examine the defendant, and all reasonable expenses incurred shall be audited and paid as in the case of other court expenses. A copy of the complaint or indictment and of the medical certificates attested by the clerk shall be delivered with such person in accordance with the provisions of the said section. If a person so removed is in the opinion of the trustees and superintendent of the hospital restored to sanity, he shall forthwith be returned to the jail or custody from which he was removed, where he shall be held in accordance with the terms of the process by which he was originally committed or confined.

Commitment of person acquitted of murder, etc., by reason of insanity.—If a person who is indicted for murder or manslaughter is acquitted by the jury by reason of insanity, the court shall order him to be committed to a state hospital for the insane during his natural life, and he may be discharged therefrom by the governor, with the advice and consent of the council, when he is satisfied after an investigation by the state board of insanity that such person may be discharged without danger to others.—Acts of 1909, chap. 504, secs. 103 and 104.

MICHIGAN.

[*Accused person found insane by grand jury*].—When any person held in prison on a charge of having committed an indictable offense, shall not be indicted by the grand jury by reason of insanity, such jury shall certify that fact for such cause; and thereupon, if the discharge or going at large of such insane person shall be deemed manifestly dangerous to the peace and safety of the community, the court may order him to be retained in prison until the further order of the court, otherwise he shall be discharged.—Compiled Laws, 1897, sec. 11895.

When prisoner acquitted by reason of insanity.—When any prisoner indicted for an offense shall, on trial, be acquitted by the jury by reason of insanity, the jury in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, there to be kept until the further order of the court; otherwise he shall be discharged.—Compiled Laws, 1897, sec. 11953.

When court may order persons sent to state asylum.—When a person accused of the crime of murder, attempt at murder, rape, attempt at rape, incest, abduction, highway robbery or arson, or attempt to do great bodily harm, shall appear to be insane, or shall have escaped indictment upon the grounds of insanity or shall have been acquitted upon trial upon the grounds of insanity, the court, being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether his insanity in any degree continues, and if it does, shall order such person into safe custody and to be sent to the state asylum. If any person in confinement under indictment for the crime of arson, or murder, or attempt at murder, rape, or attempt at rape, or incest, or abduction, or highway robbery, or assault to do great bodily harm, shall appear to be insane, the judge of the circuit court of the county where he is confined shall institute a careful investigation. He shall call two or more reputable physicians and other credible witnesses, and the prosecuting attorney, to aid in the examination, and if it be deemed necessary to call a jury for that purpose, is fully empowered to compel the attendance of witnesses and jurors. If it is satisfactorily proved that such person is insane, said judge may discharge such person from imprisonment and order his safe custody and removal to the state asylum, where such person shall remain until restored to his right mind, and then, if the said judge shall have so directed, the superintendent of said asylum shall inform the said judge and prosecuting attorney, so that the person so confined may within sixty days thereafter be remanded to prison and criminal proceedings be resumed, or he be otherwise discharged. If any such person be sent to said asylum, the county from which he is sent shall defray all expenses of such person while at the asylum for a period of two years, and the expense of returning home to such county if his discharge is effected during such period. If he shall not be discharged from the said asylum until after his transfer to the state shall have been effected, under the provisions of a subsequent section, the expenses of his return to said county shall be paid by the state of Michigan. The county or state may recover the amount so paid from the person's own estate, if he have any, or from any relative, town, city or county that would have been bound under existing laws to provide for and maintain him elsewhere.—Public Acts, 1905, sec. 19, p. 344.

Insane entitled to writ of habeas corpus.—Anyone in custody as an insane person in any asylum, home or retreat, is entitled to a writ of *habeas corpus*, upon a proper petition to the circuit court of the county in which said asylum, home or retreat is situated, made by him or some friend in his behalf. Upon the return of such writ, the fact of his sanity shall be inquired into and determined. The medical history of the patient, as it appears in the books of the asylum, home or retreat, shall be given in evidence, and the superintendent or medical officer in charge of the institution wherein such person is held in custody, and any other proper person, shall be sworn touching the mental condition of such person.—Public Acts, 1903, sec. 35, page 339.

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MINNESOTA.

Criminal responsibility of insane persons.—No person shall be tried, sentenced or punished for any crime while in a state of idiocy, imbecility, lunacy or insanity, so as to be incapable of understanding the proceedings or making a defense; but he shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act he was laboring under such a defect of reason, from one of said causes, as not to know the nature of his act, or that it was wrong.—Revised Laws, 1905, sec. 4756.

Insanity, etc., of defendant.—Whenever any person under indictment or information, and before or during the trial thereon and before verdict is rendered, shall be found to be insane, an idiot, or an imbecile, the court in which such indictment or information is filed, shall forthwith commit him to the proper state hospital or asylum for safe keeping and treatment; and whenever at such time any such person shall, in addition, be found to have homicidal tendencies, such court shall forthwith commit him to the asylum for the dangerous insane for safe keeping and treatment; and in either case such person shall be received and cared for at the institution to which he is thus committed until he shall recover, when he shall be returned to the court from which he was received to be placed on trial upon said indictment or information.

Acquitted on ground of insanity.—Whenever during the trial of any person on an indictment, or information, such person shall be found to have been, at the date of the offense alleged in said indictment, insane, an idiot, or an imbecile, and is acquitted on that ground, the jury or the court, as the case may be, shall so state in the verdict, or upon the minutes, and the court shall thereupon, forthwith, commit such person to the proper state hospital or asylum for safe keeping and treatment; and whenever in the opinion of such jury or court such person, at said date, had homicidal tendencies, the same shall also be stated in said verdict, or upon said minutes, and said court shall thereupon forthwith commit such person to the hospital for the dangerous insane for safe keeping and treatment; and in either case such person shall be received and cared for at said hospital or asylum to which he is thus committed. No such person so acquitted shall be liberated therefrom, except upon the order of the court committing him thereto and until the superintendent of the hospital or asylum where such person is confined shall certify in writing to such committing court that, in his opinion, such person is wholly recovered and that no person will be endangered by his discharge. *Provided*, that nothing herein shall be construed as preventing the transfer of any person from one institution to another by the order of the board of control, as it may deem necessary.—Laws of 1907, c. 358, sec. 1. (Amendments of secs. 5375 and 5376 of Revised Laws, 1905).

MISSISSIPPI.

Insane person charged with crime.—When a prisoner shall be brought before any conservator of the peace, charged with the commission of an offense, and, in the course of the investigation, it shall appear that the prisoner was insane when the offense was committed, and still is insane, he shall not be discharged, but the conservator of the peace shall remand the prisoner to custody, and forthwith report the case to the chancellor or clerk of the chancery court, whose duty it shall be to proceed with the case according to the law relating to persons of unsound mind.—Code of 1906, sec. 1538.

Writ de lunatico inquirendo.—The chancery courts have jurisdiction of writs of lunacy, to be exercised by the clerks at any time, subject to the approval of the court. Any relative of a lunatic or insane person may procure him to be so adjudged; but if the relations and friends of any lunatic or insane person shall neglect or refuse to place him in an insane hospital, and shall permit him to go at large, the clerk of the chancery court shall, on the application, in writing and under oath, of any citizen, direct the sheriff, by writ of lunacy, to summon the alleged lunatic or insane person to contest the application, and six freeholders to make inquiry thereof, on oath, and the result of the inquiry to return to the clerk. The jury shall be impaneled in the presence of the clerk, and shall be charged by him to make due inquest as to the particulars indicated in the two following sections.—Code of 1906, sec. 3219.

When grand jury do not indict because of insanity, what shall be done, etc.—When any person is held in prison or on bail charged with an offense, and the grand jury shall not find a true bill by reason of the insanity of the accused, the grand jury shall certify the fact to the circuit court, and state whether such insane person be in such condition as to endanger the security of persons or property and the peace and safety of the community. And if the grand jury report such unsoundness of mind and such danger, the court shall forthwith give notice of the case to the chancellor or clerk of the chancery court, whose duty it shall be to proceed with such person and his estate according to the law relating to persons of unsound mind.

When acquitted because of insanity.—When any person shall be indicted for an offense, and acquitted on the ground of insanity, the jury rendering the verdict shall state therein such ground, and whether the accused have since been restored to his reason, and whether he be dangerous to the community; and if the jury certify that such person is still insane and dangerous, the judge shall order him to be conveyed to and confined in one of the state asylums for the insane.—Code of 1906, secs. 1539 and 1540.

MISSOURI.

Insane, jury to try subsequent to indictment.—If any person indicted for any crime in this state shall, after his indictment and before his trial on such charge, become insane, and the circuit or criminal court wherein such person stands charged shall have reason to believe that such person has so become insane, it shall be the duty of such court to suspend all further proceedings against such person under said charge, and to order a jury to be summoned to try and decide the question of the insanity of such person, and said judge shall notify the prosecuting attorney of the pendency of such inquiry. The alleged insane person shall be notified of such proceeding, unless the court order such person to be brought before it.

Jury to decide insanity—costs, how paid.—If upon such inquiry the said jury shall become satisfied that such person has so become insane, they shall so declare in their verdict, and the court shall, by proper warrant to the sheriff, marshal or jailer, order such person to be conveyed to the lunatic asylum and there kept until restored to reason. And such person shall be thereupon disposed of, and the costs and expenses of conveying him to said asylum and of his support and maintenance at said asylum shall be taxed, paid and collected as now provided by law in cases of the insane poor; *Provided*, if such person shall have property, the costs shall be paid out of his property by his guardian.

Restored to reason, prosecution continued.—When such person shall be restored to reason, he shall be returned to the county whence he came, and the proceedings against him shall be continued and be prosecuted, and his trial had as though no such inquiry and proceedings thereon, as herein provided, had been made, and if upon such inquiry it shall be determined that said person has not so become insane as aforesaid, the criminal proceedings against him shall be continued and prosecuted, and his trial had in the same manner as though no such inquiry had been made and had.—Revised Statutes, 1909, secs. 5207-5209.

Jury trial to determine sanity of person charged with crime.—When a person, tried upon indictment for any crime or misdemeanor, shall be acquitted on the sole ground that he was insane at the time of the commission of the offense charged, the fact shall be found by the jury in their verdict, and by their verdict the jury shall further find whether such person has or has not entirely and permanently recovered from such insanity; and in case the jury shall find in their verdict that such person has so recovered from such insanity, he shall be discharged from custody; but in case the jury shall find such person has not entirely and permanently recovered from such insanity, the prisoner shall be dealt with as provided in the two following sections.

Prisoner may be sent to hospital, when—costs to be paid from estate—to furnish superintendent copy of order.—If the prisoner is not a poor person, and the court is satisfied, from the nature of the offense or otherwise, that it would be unsafe to permit the prisoner to go at large, an order shall be entered of record that he be sent to a state hospital, designating it, and further requiring

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the sheriff or other ministerial officer of the court, with such assistance as may be specified in the order, to convey such prisoner to the hospital, after first ascertaining from the superintendent that such prisoner will be received into the hospital, and until the receipt of such information, to keep such prisoner in the county jail, poorhouse or other safe custody; and further, that the cost which may accrue in carrying into effect this order, and all expenses for the support and maintenance of such person whilst in the care and custody of the officer and at the hospital, shall be paid out of the proceeds of the estate of such person. And the court shall have power, at each succeeding term, to tax up, so long as it may be necessary, such cost and expenses as may have accrued since the preceding term, and cause the same to be levied and collected by execution; and the officer collecting the same shall pay to the treasurer of the hospital, and to such other persons as may be entitled thereto, their respective amounts due. The clerk of the court shall furnish a copy of the order of the court, under his official seal, to be lodged with the superintendent, upon the admission of the prisoner into the hospital, and issue a warrant upon said order to the officer named in said order as near as may be of the form specified in section 1424.—Revised Statutes, 1909, secs. 1430 and 1431.

MONTANA.

Sections 9520-9526 of the Revised Codes, 1907, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

Verdict.—When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be “not guilty by reason of insanity.”—Revised Codes, 1907, part of sec. 9322.

Proceedings on acquittal on ground of insanity.—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county, to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the county attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.—Revised Codes, 1907, sec. 9338.

NEBRASKA.

Proceedings where the accused becomes insane.—A person that becomes lunatic or insane after the commission of a crime or misdemeanor ought not to be tried for the offense during the continuance of the lunacy or insanity. * * * In such case it shall be the duty of the court to impanel a jury to try the question whether the accused be, at the time of the impanelling, insane or lunatic.—Cobbey's Annotated Statutes, 1911, sec. 2614.

Criminal insane, disposition of.—That any person prosecuted for an offense may plead that he is not guilty by reason of insanity or mental derangement; when the defense is insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict. The court must thereupon order the defendant to be committed to the state hospital for the insane, until he becomes sane and is discharged by due process of law. *Provided*, that the defense of insanity may be raised under a general plea of not guilty.—Cobbey's Annotated Statutes, 1911, sec. 2614x1.

Insane entitled to benefit of habeas corpus.—All persons confined as insane, dipsomaniacs, inebriates or as persons addicted to the excessive use of morphine, cocaine or other narcotic drugs, shall be entitled to the benefit of a writ of *habeas corpus* and the question of insanity, dipsomania, inebriety or the excessive use of morphine, cocaine or other narcotic drugs, shall be decided at the hearing, and if the judge shall decide that the person is insane, or a dipsomaniac, an inebriate or an excessive user of morphine, cocaine or other narcotic drugs, such decision shall be no bar to the issuing of a writ a second time

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whenever it shall be alleged that such person has been restored to reason or has been cured from dipsomania, inebriacy or of the excessive use of morphine, cocaine or other narcotic drugs, but no court shall have jurisdiction to hear such writ until the clerk of the district court of the county in which the board of commissioners on insanity had the matter of detaining such person under consideration has been given reasonable notice of the time and place of such hearing. That upon the hearing of the writ of *habeas corpus* herein provided for, if it shall appear that the board of commissioners on insanity had jurisdiction of the patient, such patient shall not be released from custody by any court in this state except for the reason that such person has been restored to reason or cured of being a dipsomaniac, or inebriate or of the use of morphine, cocaine or other narcotic drugs. *Provided*, however, that if the proceedings of such board of commissioners are so irregular as not to justify the detention of such person, then such person shall be by order of court returned to the sheriff of the county from which committed, there to be proceeded with according to law before the board of commissioners on insanity of such county.—Cobbey's Annotated Statutes, 1911, sec. 10088.

NEVADA.

Sections 7385-7393 of the Revised Laws of 1912 prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

Acquitted by reason of insanity, confinement in the hospital for mental diseases.—Where on a trial a defense of insanity is interposed by the defendant and he is acquitted by reason of that defense the finding of the jury shall have the same force and effect as if he were regularly adjudged insane as now provided by law, and the judge thereupon shall forthwith order that the defendant be confined in the hospital for mental diseases until he be regularly discharged therefrom in accordance with law.—Revised Laws, 1912, sec. 7217.

NEW HAMPSHIRE.

Procedure when criminal pleads insanity.—When a person is indicted for any offense, or is committed to jail on any criminal charge to await the action of the grand jury, any justice of the court before which he is to be tried, if a plea of insanity is made in court, or said justice is notified that such plea will be made, may, in term time or vacation, order such person into the care and custody of the superintendent of the state asylum for the insane, to be detained and observed by him until further order of the court, or until such person shall have been ordered discharged from said New Hampshire state hospital by its trustees upon a report to them by said superintendent that such person is not insane.—Laws of 1911, chap. 13, sec. 1.

Insanity to be certified by grand jury.—Whenever the grand jury shall omit to find an indictment against a person, for the reason of insanity or mental derangement, or a person prosecuted for an offense shall be acquitted by the petit jury for the same reason, such jury shall certify the same to the court.

Admitted or found by verdict.—Any person prosecuted for an offense may plead that he is not guilty by reason of insanity or mental derangement, and such plea may be accepted by the state's counsel, or may be found true by the verdict of the jury.

Court may commit in case of.—In either of the cases aforesaid, the court, if they are of opinion that it will be dangerous that such person should go at large, may commit him to the prison or to the asylum for the insane, there to remain until he is discharged by due course of law.

May be discharged or transferred.—The governor and council or the supreme court may discharge any such person from prison, or may transfer any prisoner who is insane to the asylum for the insane, to be there kept at the expense of the state, whenever they are satisfied that such discharge or transfer will be conducive to the health and comfort of the person and the welfare of the public.—Public Statutes and Session Laws, 1901, chap. 255, secs. 1-4.

(To be concluded in the next issue.)

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

PROFESSORS CHESTER G. VERNIER AND ELMER A. WILCOX.

CONSTITUTIONAL LAW.

May v. U. S., 199 Fed. 53. *Self incrimination.* "That internal revenue officers, in raiding defendant's place of business for alleged violations of Oleomargarine Act Aug. 2, 1886, c. 840, section 17, 24, stat. 212 (U. S. Comp. St. 1901, p. 2234), seized certain articles, letters, papers and two promissory notes signed by defendant M., which notes were afterwards introduced in evidence against him, did not constitute a violation of his constitutional right against being compelled to testify against himself."

COURTS.

People v. Miller, Ill. 99 N. E. 873. *Amendment of record.* "Though the record of the Criminal Court of Cook County sent up on appeal showed that the July term, 1905, was opened on July 5th, instead of on July 3d, which was the first Monday in July, as required by statute, where the records of the criminal court showed that it was opened on July 3d, by the judge who convened the July term, another judge of the same court could permit an amendment of the record so as to make it speak the truth by reciting that fact as a placita to a judgment in a case tried by him in the July term."

EVIDENCE.

People v. Enright, Ill. 99 N. E. 936. *"Criminal law—evidence—privilege of defendant.* In a criminal prosecution where the defendant did not testify, an instruction that the jury should consider as though the defendant was not allowed to testify, was properly refused."

State v. Flanagan, N. J., 84 Atl. 1046. "On a trial of the defendant for manslaughter for pushing one from a trolley car, causing his death, evidence of the disorderly conduct of the defendant towards others in the car just prior to the embarking of the deceased and the act of the defendant which caused his death was allowed to show his state of mind and continuity of disposition toward those about him on the car. Held, that this was competent as evidencing his state of mind as carried forward and exhibited in a criminal act."

People v. Gibson, Ill. 99 N. E. 599. *Admissibility of evidence of other offenses.* "In a prosecution for statutory rape, evidence that about the same time and in the same room accused committed the crime against nature upon the prosecutrix, and had intercourse several times afterwards, was admissible.

"In a prosecution for statutory rape, evidence was not admissible that the accused had intercourse with a playmate of prosecutrix in the same room a few minutes after the act charged; the two acts not being so connected as to be part of the same transaction."

Frits v. State, Ind. 99 N. E. 728. *Burden of proof as to sanity.* "Defendant's sanity or mental capacity to form an intent to kill is, if in issue, an essential element of murder, and this element the state is bound to prove beyond a reasonable doubt, and not merely by a preponderance of the evidence. The

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evidence of the defendant's insanity need not predominate in weight over that going to show his sanity, but if the jury find it sufficient to raise a reasonable doubt as to his sanity, the law requires an acquittal."

ELEMENTS OF OFFENSE—INTENT.

State v. Gallagher, N. J. 85 Atl. 207. "Indictment charged defendant with an assault upon William H. Edwards with intent to kill the said Edwards. Upon the trial it was proven that defendant intended to kill Mayor Gaynor. This was a statutory crime. The court held that the common-law principle, that the intent with which an act is done determines the legal character of its consequences although such consequences operate upon a different person from that intended, applied to statutory crimes.

FORMER JEOPARDY.

Roman v. State, Tex. Cr. App. 142 S. W. 912. *Crime Used as Circumstantial Evidence of Another Crime.* Defendant was tried and acquitted for statutory burglary by breaking and entering a railroad car. He was then tried on an indictment for larceny of the contents of the car. His plea of former jeopardy was overruled and the court refused his request for an instruction that the jury, in determining the question of his guilt or innocence of larceny, could not consider for any purpose whether or not he broke and entered the car from which the property was stolen. Held, that the common law rule merging burglary and theft when committed contemporaneously and making conviction of one bar a prosecution for the other is abrogated by the provisions of the Penal Code making burglary and theft, though growing out of the same transaction, two separate and distinct offenses. While defendant could not be prosecuted a second time for burglary, any evidence tending to show that he was guilty of theft should be admitted, even though it prove that he was really guilty of burglary. The conviction was reversed on another ground.

People v. Darr, Ill. 99 N. E. 651. *Offense Charged.* "An indictment charging that the defendants conspired to obtain a bank check for \$650 from an insurance company by obtaining a policy on certain chattels and thereafter setting fire to the chattels with intent to defraud the company by falsely pretending that a loss of \$650 resulted from the fire, etc., charged an offense of conspiring to burn goods with an intent to defraud an insurance company, and did not bar a subsequent prosecution for the offense of burning goods to defraud the insurance company."

People v. Goldfarb, 138 N. Y. Supp. 62. "Accused was arrested without warrant and charged by affidavit before a magistrate having jurisdiction with disorderly conduct tending to a breach of the peace contrary to Consolidation Act (Laws 1882, c. 410), section 1458, making persons using threatening or insulting behavior in a public place, whereby a breach of the peace may be occasioned, guilty of an offense, and was duly arraigned and entered upon trial, and after one witness was sworn the magistrate directed that the accused be discharged and a new complaint made; and the new complaint, based on the same facts, charged a violation of Penal Law (Consol. Laws 1909, c. 40), section 720, making it a misdemeanor to disturb the occupants of a car by disorderly conduct, of which offense the magistrate did not have jurisdiction. Held, that the accused was put in jeopardy on the hearing on the first complaint, so that his

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discharge was a bar to a subsequent prosecution under the second complaint. even though the magistrate did not actually intend to acquit the accused by discharging him on the first complaint."

GAMING.

Ferguson v. State, Ind. 99, W. W. 806. "A slot machine operated by the player depositing a nickel therein and then turning a crank, whereupon the machine will automatically pay the reward, which will always contain a package of chewing gum of the retail value of five cents, and sometimes in addition thereto one or more checks which may be used in playing the machine in the same manner as nickels are used, is a gambling device, within Burns' Ann. St. 1908, Par. 2474, punishing the keeping of devices for gaming; though by means of indicators the player is informed as to what the record will be before each play, though there is no method of knowing what the reward will be as to subsequent plays."

GRAND JURY—MANNER OF SELECTING JURORS.

United States v. Nevin, 199 Fed. 831. "Where members of a grand jury are summoned by order the court from the body of the district without the drawing of names, the validity of the indictment is not affected if the members are duly qualified."

INDICTMENT.

Commonwealth v. Cornell, Mass. 99 N. E. 975. *Sufficiency*. "In view of R. L. c. 218, sections 17, 39, making a detailed description unnecessary, giving the defendant a right to a bill of particulars if the charge is not sufficiently set out, and making the charge sufficient when in the words of the statute, an indictment for exposing poison to cattle was not indefinite in using the word 'cattle.'"

People v. Feinman, 137 N. Y. Supp. 933. *Sufficiency*. "Accused cannot be adjudged guilty of larceny under allegations of an indictment under Penal Law (Consol. Laws 1909, c. 40), section 947, which after charging that the accused, with intent to defraud and deprive C. of certain goods and appropriate them to the use of the defendant and defendant's principal, did falsely pretend and represent to C. by a written instrument, set out in full, relating to the means and ability of the principal of the accused to pay for the goods, and that the representations were in all respects false, and that C. did sell to the principal of the accused on credit certain goods, and delivered them; such indictment plainly indicating that it was not the intent of C. to sell the goods to the defendant, but to the defendant's principal."

Reese v. U. S., 33 Sup. Ct. Repr. *Formal defect*. "The delivery of an indictment to the court by the foreman of the grand jury in the absence of the other jurors, if a defect at all, is 'in matter of form only' within the meaning of U. S. Rev. St., Sect. 1025, U. S. Comp. St. 1901, p. 720, providing that no indictment presented by a grand jury shall be deemed insufficient nor the trial, judgment, or other proceedings thereon be affected by any such defect which shall not tend to the prejudice of the defendant, it not being disputed but that the indictment was found and returned into court as a true bill."

People v. Clark, Ill. 99 N. E. 866. *Validity of statute*. "Cr. Code Sec. 98 (Hurd's Rev. St. 1911, c. 38), provides that every person who shall obtain from

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any other person any money or property by any device commonly called the confidence game shall be imprisoned, etc., and section 99 provides that in every indictment under the preceding section it shall be a sufficient description of the offense to charge that the accused did unlawfully, etc., obtain from the person named "his money (or property in case it be not money)" by means of the confidence game. Held, that section 99 when construed to authorize the charging of obtaining 'money' by the confidence game without any added words of description, did not violate bill of rights, section 9, giving the accused the right to demand the nature and cause of the accusation against him."

INDICTMENT AND INFORMATION.

Hawkins v. State, Tex. Cr. App. 142 S. W. 917. *Clerical Error*. An indictment for theft charged the defendant with stealing property with intent to "appropriate" it to his own use. Held that as only one letter was omitted, and with this omission no other word was spelled, and no other meaning conveyed, the court would refuse to quash the indictment. It was said that if an entire syllable was omitted, or with a letter missing a different word was spelled with a different meaning, the indictment would be quashed.

The case of *Jones v. State*, 25 Tex. App. 621, 8 S. W. 801, 8 Am., St. Rep. 449, in which the same word was spelled "appriate" and the indictment quashed, was distinguished on the ground that an entire syllable "pro" was omitted. It is not clear how the court knew that the letters omitted were "pro" rather than "rop."

Roman v. State, Tex. Cr. App., 142 S. W. 912. *Description of Stolen Property*. An indictment charged the larceny of 92 buckets of "lard." The proof was that the defendant stole a compound of cottonseed oil and beef fat, which was used as a substitute for lard, looked like lard, and was called lard by the witnesses, several of whom thought it was lard. The trial court charged the jury that if the "property had the appearance of the product of the hog known as 'lard,' and was called, used as, for and as a substitute for said hog product known as lard, then in law it is lard." Held that as it was commonly called lard in Texas and also in Louisiana, where it was made, there was no variance, the evidence was properly admitted to prove the charge in the indictment, and the instruction to the jury was correct.

INDICTMENT AND INFORMATION—PRESENTMENT.

Bresse v. United States, 33 Sup. Ct. Rep. 1. "Where more than twelve grand jurors voted to find the indictment a true bill, a delivery of the indictment to the presiding judge by the foreman, unaccompanied by the grand jurors, was not a defect as would work such a prejudice on the defendant as to justify a reversal of the conviction."

INDICTMENT AND INFORMATION—MOTIONS TO QUASH—GROUNDS.

Pittsburgh, C. C. and St. L. Ry. Co. v. State, Ind. 99 N. E. 801. "The question whether Act March 8, 1909 (Acts 1909, c. 178), requiring railroad locomotives to be equipped with automatic bell-ringers, violated Const. U. S. art. 1, Par. 8, or the Interstate Commerce Laws enacted thereunder, was not raised by the motion to quash an indictment for a violation thereof not showing on its face that defendant's road or locomotives was operated outside the state, in

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view of Burns' Ann. St. 1908, Par. 3065, expressly limiting such a motion to defects apparent on the fact of the indictment."

IMPROPER ARGUMENT OF COUNSEL—OBJECTIONS NECESSITY.

McPherson v. State, Ind. 99 N. E. 984. "The misconduct of the prosecuting attorney in his argument to the jury cannot be taken advantage of on appeal, unless accused moved to set aside the submission and discharge of the jury, or asked the court to direct the jury to disregard the improper statement, or take other action to neutralize the misconduct."

INSTRUCTIONS.

People v. Barkas, Ill. 99 N. E. 699. "In a prosecution for homicide, an instruction that the jury need not believe the testimony of the accused, and should not do so, if, after fairly and impartially considering all the evidence, they believed that the accused wilfully and knowingly testified falsely to any material matter, is erroneous because improperly directing the jury to disregard defendant's testimony; the word 'should' being equivalent to 'ought to.'

"In a prosecution for homicide, an instruction that, though the accused is a competent witness, the jury are the judges of the weight to be given his testimony, and that the jury should consider all the circumstances surrounding the case, and give the accused's testimony 'only' such weight as they believe it entitled to, is improper; the word 'only' constituting a caution to the jury to be careful in giving credit to the accused's testimony."

JURISDICTION.

State v. Hall, Conn. 84 Atl. 923. "Whether a case is a criminal one is not to be determined from the form of the complaint and process alone, so that a proceeding under Acts 1909, c. 260, section 8, as amended by Acts 1911, c. 205, section 5, providing for a proceeding whereby delinquent taxpayers may be committed to jail or to the workhouse, is not rendered a criminal proceeding within Gen. St. 1902, sections 1482, 1483, which provide that the criminal courts of common pleas shall have jurisdiction of only such criminal cases as are appealed to them from lower courts, and prescribe the procedure therein, by the fact that the complaint therein was in criminal form."

JURY.

Rigsby v. State, Tex. Cr. App., 142 S. W. 901. *Improper Influence*. After the jury had been sworn in the trial of a prosecution for the illegal sale of liquor, the court adjourned that a prohibition speech might be delivered in the courthouse, in a campaign to secure state-wide prohibition. The jurors remained during the speech, which lasted an hour and a half and contained "much forcible oratory and invective with regard to the violation of the local option law." When the court reconvened the defendant moved to dismiss the jury because they had heard the speech. The motion was overruled. This was held to be error. As the jury had been exposed to improper influences which may have affected their verdict, the presumption of law is against the purity of that verdict. As the state did not show that the jury had not been influenced by the speech the conviction was reversed.

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MOTIONS IN ARREST OF JUDGMENT—GROUNDS.

Pittsburgh, C. C. and St. L. Ry. Co. v. State, Ind. 99 N. E. 801. "The question whether Act March 8, 1909, is constitutional, was not raised by a motion in arrest of judgment in view of Burns' Ann. St. 1908, Par. 2159, authorizing such motion only where the grand jury had no jurisdiction of the offense, or where the facts stated in the indictment do not constitute a public offense. The sufficiency of the evidence in a criminal cause cannot be reviewed by a motion in arrest of judgment."

PROOF OF MOTIVE.

People v. Enright, Ill. 99 N. E. 936. "The state is not required to prove the motive for a crime, although evidence of motive is admissible, and hence an instruction that, if the evidence failed to show any motive, this was a circumstance which should be considered by the jury was properly refused."

TRIAL.

State v. Brennan, N. J., 84 Atl. 1066. *Necessity of plea*. "Where an allegation filed by the prosecutor of the pleas charged distinct offenses in two counts, and accused plead not guilty to the second count only, a conviction of the offense charged in the first count was invalid, because not supported by a plea, without which there can be no issue and no valid trial."

"Error in convicting a person of an offense charged in a count to which he has not pleaded cannot be cured after verdict by entering a plea of not guilty without the accused's consent."

NOTES ON CURRENT AND RECENT EVENTS

ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE.

Criminal Families.—Students of criminology and the members of the lay press are wont to speak of "criminal families" as though they were of common occurrence. Though there are families in which several members of both the ascending and descending branches and even members connected with the family only through marriage have been law-breakers, they are comparatively rare. In Kleemann's opinion (*Gross' Archiv*, 47, July, 1912) a criminal family is one which exhibits signs of physical, psychical and ethical degeneration and an inherent tendency to commit punishable acts, and with one or more members convicted of transgressions of the law.

There are two theories in connection with hereditary transmission and degeneracy, disclaiming the former: (1) The individual determines his own fate, and heredity is of no consequence; (2) criminal tendency is not regarded as a deviation from the normal in an originally normal individual, but as an indication that the individual has remained in the primitive, prehistoric stage. This theory distinguishes atavism from degeneracy. Atavism was upheld by Lombroso. The chief objection to applying it to criminal families in general is the difficulty of demonstrating atavistic factors, as the families can at most be traced only during one or two centuries, and most of the time only a few decades. (It might be remarked here parenthetically that American investigators are doing better work than this.) The question of progressive degeneracy, Kleemann thinks, must therefore always remain hypothetical. Moreover, even those families in which the criminal tendency is most marked possess some law-abiding and normal members, therefore hereditary influence cannot be the only reason for the decadence. Alcohol and vagabondage are probably contributing factors in each case.

Hartmann writes after his investigation in Switzerland that a considerable number of families transmit criminal tendencies from generation to generation, but true progressive degeneration is rare, and the polymorphous heredity predominates, as anomalies of character, psychosis, alcoholism and neuroses. These families do not show a tendency to die out, as the supporters of the theory of the survival of the fittest claim, but are on the contrary unusually prolific.

On the other hand, Sommer argues that post-natal influences do not adequately explain the tendency. Every individual who is somatically undeveloped, or psychologically inferior, should be regarded as a degenerate. Degeneration can therefore be endogenic or exogenic. Here the contributing factors are chiefly sociological and economical. The inherited as well as the acquired criminal tendency may be influenced and adjusted through physical, ethical and psychical attributes which are inherent in the germ plasam, and the greater the endogenous variations, the greater the adaptability, based on the assumption that acquired mental characteristics modify the germ cells. In other words, thoughts and feelings are not directly transmitted, but the motive impulses governing them are. Sommer calls this "motive-automatism" (*Bewegungsautomatism*). Volition is therefore a dynamic element in the development, not a mere psychical parallel to the mechanical element. Sommer maintains that

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heredity is not an exclusively somatic product. Characteristics of will and temperament are also transmitted, and in the criminal families the ego and the character are in early childhood manifested in an abnormal way, and the abnormality becomes aggravated through the influence of the surroundings.

This whole article while interesting is largely a desk product, or like so many articles on criminology, drawn from a few instances only. We commend the careful work of our American investigators, Davenport, Cotton, Rosanoff and Goddard along this and related subjects, the Kallikak, Nann and Hill family trees in particular.

S. E. J.

Psychological Problems of Penal Jurisprudence.—Under the head of "Psychological Problems of Penal Jurisprudence," Andreotti Algreto has in the May-June number of *Il Progresso del Diritto Criminale*, an article entitled *Della comunicabilità della causa honoris ai complici estranei al delitto d'in fanticidio*, which deals with one of those exemptional laws peculiar to continental jurisprudence and so foreign to English laws that they are inevitably a shock to a common law lawyer, who equally inevitably congratulates himself on his broad mindedness, when he overcomes his first surprise and accepts them even in theory. Article 369 of the Italian penal code provides that when an infant is killed under certain conditions in order to conceal an illegitimate birth by its mother, her husband, brother or sister, lineal ascendant, or adopted parent, the punishment for murder is reduced to imprisonment of from three to twelve years. This article came before the Roman Court of Cassation, who handed the following opinion in part: that article 369 was of course restricted in application to the persons therein named, and that "whoever takes part as an accomplice in the killing of an infant, committed by one of the persons named in article 369, penal code, must be held guilty as an accessory in voluntary homicide." This opinion, of course, may not appeal to American lawyers, for it gives us accessories, guilty, where there is no principal, but our author, being a Continental jurist is not worried on any such score. He takes up "the critical examination of the arguments upon which the theses of the communicability or incommunicability of this *causa honoris* rests." We must, however, before anything else note the points of view of the Italian court, which does not consider the opportunity as a reason for increasing the punishment as a deterrent, but looks upon the incentive as a reason for decreasing the punishment, because the greater the incentive the less criminality is, *ceteris paribus*, involved in the crime. This determined the opinion of the court. The exemption was personal. It was allowed out of regard for the psychological state of certain persons. It was incommunicable in fact, and law must follow fact. However much one may vicariously suffer for the disgrace of a friend, the psychological state is very different from that caused by one's own disgrace, even if such disgrace lies not in one's own shame but in that of a near member of one's family. The exemption should not, therefore, be extended, as the reasons for it do not extend in fact. An accessory is such by reason of this help in an objective fact (a *quid juris* so marks him) that the fact, by reason of the principal's age or provocation is given in his regard a different *nomen juris*, cannot affect him. Thus, the Italian Court held that though A., who killed an infant, is for sufficient personal reasons of a psychological nature held guilty of crime. B., who helped him, to whom, however the said sufficient personal reasons of a psychological nature did not apply, could be guilty of crime,

BATTAGLINI'S CRITICISM OF POSITIVISM

because the *quid juris* was the same. This reasoning is perfect. Its wisdom cannot be doubted. It goes to show, as so much of modern Italian law does show, the accuracy and advantage of canon law, as developed by modern science, aided by discoveries in psychology and sociology and applied by men of a scientific and philosophical juridical training.

Herein lies the interest of Alfredo's review to us. It is not the particular case that should govern. The exemption of the *causa honoris* may be bad, perhaps it is impracticable only in America, but the spirit which prompted its enactment, and the kind of examination to which it was subjected in the Italian appellate court, are qualities which could well be imported into American legislation and American criminal trials. Until this spirit does prompt us in our law making and law enforcing, we cannot hope to accomplish efficiently the great object of all criminal jurisprudence: the lessening and ultimate and final abolition of crime.

J. L.

Obstinate Simulation of Insanity.—Schäfer observed a man, arrested for burglary, who simulated insanity during nine months in the hope of evading justice. (*Arch. f. Kriminal-Anthropologie u. Kriminalistik*, XVLL, June, 1912). He claimed to be an American millionaire and pretended to understand very little German. At the medical examination he simulated vertigo and nodding spasm, emitted queer sounds when told to take a deep breath, and kept the left shoulder higher than the right. He said the left shoulder was the north pole, and the right the south pole. Attempts to reduce the left shoulder forcibly to the normal position failed, but the joint and mobility were normal. The man was placed in the psychopathic ward for observation. He walked around the ward draped in his bed clothes, "like an Indian," probably to be able to drop his shoulder without being detected. At frequent intervals he would stand on the left leg, touch the floor with the tip of the right foot, and then shake the right leg violently. This, he said, was to receive telegrams through the floor.

After having kept up this character for nine months, and so perfectly that an old and experienced psychiatrist was deceived, he was condemned to six years imprisonment. The mental disturbances disappeared at once, the shoulder resumed its natural position and he regained command of his mother tongue. Schäfer emphasizes that in his opinion there was no psychopathological basis for the simulation.

S. E. J.

Battaglini's Criticism of Positivism.—It is interesting to note the firmness and the heat with which adherents of opposite schools of criminology in Italy hold fast to their beliefs. Professor Guilio Q. Battaglini contributes to "*La Guistisia Penale*" for February 1, 1912, a short review of Vincenzo Manzini's "Manual of Italian Penal Procedure," in which the reviewer exults over the fact that Manzini is not held bound by the doctrines of the Italian Positive School, but rather runs in an opposite direction. He deplores the fact that faith in "the disease of criminality is riding in triumph in America, while other people, like him, relegate the doctrine that criminals are sick men and sick women to the world of Chimeras." In another part of the same issue Professor Battaglini reviews, in very brief form, an article that appeared in the November issue of this Journal and makes the comment that "in America at the present time this is a moment of great optimism in regard to delinquents, and there people believe that criminals are sick men!"

R. F.

WILLIAM A. PINKERTON ON THE CRIMINAL

Work of the Psychopathic Society of California.—The Psychopathic Society of California has interested itself in persons committed to insane asylums. In the past six months they saved 52 women from the stigma of being sent to such an institution by sending 13 to private sanitariums, by caring privately for 23, sending 10 to employment and returning 3 to friends. They have obtained several paroles also and out of 72 thus taken from asylums it was necessary to return only 4.

W. I. DAY, East Oakland, Cal.

William A. Pinkerton on the Criminal.—An interview with William A. Pinkerton is published in *The Hampton Magazine* for May, 1912, under the title "Is There a Criminal Class?" in which the famous detective expresses his views on the question framed in the title which are interesting by reason of his long experience with criminals. He says, "I have been for more than fifty years in constant association with crime and lawbreakers. I may fairly claim to have had exceptional opportunities for the study and observation of the operation of the human mind and the motives that actuate those whom society terms criminals. I have reached certain conclusions which do not agree with the theories of some eminent scientists nor altogether harmonize with the teachings of the sociological schools. I have no new theory to advance, but it seems to me some facts have been generally overlooked.

"No one can study criminals at close range and believe in the existence of a criminal class, regardless of what Lombroso and his disciples may claim. It would not require any lengthy argument to prove this assertion. If there were a criminal class, sharply defined as such and differentiated from the rest of the human race by ascertainable characteristics, then it must follow that there would be a non-criminal class, comprising the rest of the human race and as sharply distinguished as the supposed criminal class.

"Humanity is not thus divided into criminals and non-criminals; there is but one classification that can be made—the class of those who have committed crimes and the class of those who have not yet committed crimes. Within certain limits, varying with the individual, every human being is a potential criminal. I have seen this illustrated so often that I am never surprised to learn that any man or woman, however highly placed and however greatly esteemed, has done something which the law forbids and for which society demands a penalty. On the other hand, however—and this is the bright side of the shield—every criminal is potentially an honest man, and with the right kind of encouragement from society will remain honest by preference. It is my observation of hundreds of criminals whose reform has been complete and permanent that makes this conclusion a definite one. It is this capacity of humanity to turn from evil ways to methods of life which society recognizes as right and proper that really proves my first conclusion, which is that crime is an accident to which a moment's carelessness may subject any living person. If these criminals who have reformed and belonged to a different order of humanity from those of us who have so far been fortunate enough not to have yielded to the impulse to crime, how could they have become members of the order to which we profess to belong? * * *

"Great crimes are never planned by men of a low order of intelligence, and the better educated a man is the more dangerous does he become when he turns criminal. There was the case of a physician in a western city that illustrates

WILLIAM A. PINKERTON ON THE CRIMINAL

both this point and the point I previously made as to the complete reform of many criminals.

"The principal bank in this city had been robbed in a most daring manner. At the luncheon hour, when no one but the assistant cashier and a girl clerk were in the building, a stranger had walked in, covered both of them with his revolvers and demanded all the cash in sight. They gave it to him to save their own lives, some \$40,000. I was asked to investigate, and certain circumstances led me to believe that some of those employed in the bank were not entirely innocent. It was plain, however, that the actual holdup had been done by some one not connected with the institution.

"A young physician in the city, a man of excellent family, well educated and highly respected, was the person upon whom the clues seemed to center. He had moved into the community from another town and on investigation I found that while he had been there a similar bank robbery had occurred. We managed, finally, to get evidence sufficient to convict him and he served his time. Upon his release he changed his name, went to New York and engaged in the practice of medicine there. He is now one of the most prominent physicians in that city and occupies a very high social position indeed. He is a member of one of New York's most exclusive clubs and is very particular to scan the lists of applicants for membership and to blackball those whom he regards as undesirable associates. I do not suppose there are three persons alive who know the identity of this exclusive gentleman with the western bank robber. * * *

"I could tell of hundreds of similar cases, all of them illustrating my main point, namely, that there is not and never has been a hard-and-fast dividing line between the criminal and non-criminal classes; that men step from one class into the other and back again with perfect ease and much oftener than the public has any idea; that it is not true that 'once a thief always a thief' any more than it is true that anyone is beyond the reach of temptation. * * *

"Hand in hand with the moral agencies which are striving to make crime less attractive, or at least to make honest labor more attractive, there are constantly being developed new methods of preventing crime and of making it more hazardous and less profitable. Not only are means of protecting life and property constantly being improved but there is no branch of science that cannot be brought to bear and is not utilized on occasion in the solution of problems of defectives that would have been unsolvable mysteries a few years ago. * * *

"It was once a very simple matter for the clever criminal to change his identity so completely that even when his crime was positively known he could remain immune from arrest under the very eyes of the police. First photography, then the Bertillon system of measurements, which has lately been supplemented by a system of classifying individual characteristics, and latest and best of all, the finger-print method of identification, are all operating to reduce the criminal's chance of escaping punishment to the minimum. * * *

"You look forward, then, to the time when there will be no more crime?"

"I do not expect mankind to reach that state of perfection in the near future. I do contend, however, that because of the causes I have outlined, crime is decreasing, criminals are becoming fewer and the number of those who really reform is constantly increasing. After fifty years of experience in the detection of crime and the pursuit of criminals I am still an optimist."

E. L.

ENRICO FERRI ON ITALY'S PROPOSED CODE

COURTS—LAWS.

Enrico Ferri on Italy's Proposed Code of Criminal Procedure.—Since 1892 several commissions have labored to produce the new Code of Criminal Procedure which was introduced at the last session of the Italian Parliament. Enrico Ferri, one of the greatest criminologists in the world, and one of the founders of the Positive School of Italy, as well as its most powerful advocate for over thirty years, made a memorable speech in the Senate in support of the New Code. Since this speech outlines the fundamental ideas of the Code, and contains some acute criticism of it, it may be instructive to summarize briefly its contents. The speech is printed in full in *La Giustizia Penale* for Aug. 29-Sept. 5, 1912.

A code of criminal procedure is even more important than a penal code. A penal code lays down the rules that are to be followed in the case of a person who has already been convicted of a crime. But a code of criminal procedure lays down the rules which are to govern any one who may fall into the toils of the law. The penal code applies to malefactors; the code of criminal procedure to guilty and innocent alike. The one applies to anti-social men; the other may apply to social men who have by misfortune or accident come within the pale of criminal law, and who may, indeed, be gentlemen. And furthermore, it is the great instrument of social defense against antisocial men.

We have an increase of criminality which is truly disquieting because it is progressive. And in the face of such a condition we have daily proof of the paralysis of justice in respect to its penal efficacy as a system of defense. Statistics show that cases in which the perpetrators of crimes remain unknown run to the proportion of 37 per cent. Add to this fourteen per cent of cases in which the accused are set free upon examination in the inferior courts, and you already have one-half of the crimes committed in our country going unpunished. If, now, you join to these cases those in which the accused are acquitted by the judge, not because of mental irresponsibility or juridical reasons, but because the evidence is not sufficient, you will see that I was right when twenty years ago I affirmed that the majority of known crimes are without penal sanctions.

But no matter how good a code is intrinsically, if there are not competent interpreters and executors of it, it will remain dead. Laws are what their interpreters and executors make them. We may make a code which will be perfect according to theory; but if we have not policemen and magistrates who know how to apply and interpret it, and prison officials who can competently execute sentences, we shall have a good theoretical code, but a practical daily justice which is bad. I am glad, therefore, to see that the new law attacks the problem of the judiciary. But I am sorry to say that that attack is a weak one; it cannot conquer the problem. We ought to return to the judicial system of the two Sicilies where criminal judges were distinct from civil judges. In this way we should get interpreters who would be specialists. It is useless to pretend that a judge is encyclopedic, and knows well both civil and penal law, the latter of which requires specific knowledge, and special orientation in matters of the understanding of the criminal. In the case of judges and prison officials, above all others, the state confronts the grave problem of its functionaries. The current is toward a progressive statization. Justice was first to become a state function; then education; then administration. And now there are those who believe that the state should become a great industry. Justice, education, ad-

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ministration require officers. But, now, when you have judges who are paid in the same proportion every 27th of the month, do they well, or do they ill, do they much, or do they little, it is humanly impossible to have state officers who are continuous in a heroism made up of sagacious and wide-awake activity. I believe that if we wish to have useful and appreciated judges, it is necessary to give to the best a compensation which will make them tranquil and content for themselves, and for their families, and will allow them to depend upon merited progress in their careers. But on the other hand, it is necessary to impose responsibility upon and to mete out disfavor to the incompetent and the idle.

The code has many good qualities, but it needs some corrections. I propose to examine the draft, and show its guiding principles.

The two fundamental principles of the Proposed Code are first the simplification of procedure and the acceleration of sentences; second, the equilibration of individual and of social rights. The oscillation that is visible in parts of the code is due in large part to the guiding principle of sustaining the balance between the rights of the individual who is defending himself against an accusation, and the rights of society, which is defending itself against crime. The makers of this Code of Procedure tend toward the accusatorial type of criminal trials. It is said that this type is a more liberal type. I do not believe the question of liberalness, or strictness in a code of criminal procedure ought to be debated. Just as it ought not to be said of a penal code that it is severe or mild, but that it is, or is not adapted to the conditions of the country for which it is made in respect to criminality and social life, so it ought not to be said of a code of criminal procedure, that it is liberal or authoritative. A code of criminal procedure ought to be technically adapted to the exigencies of penal justice for guaranteeing individual rights, without forgetting to guarantee social rights, because the function of defense against criminality consists as much in protecting the innocent as in convicting the guilty. The classical school has fought for the accusatorial type of trial, because it inherited from the French Revolution a noble defense of the rights of men, against the oppression and the tortures of the Middle Ages; so that, at its beginning, Beccaria, Mario Pagano and Filangeri were the most eloquent propounders of the rights of man caught in the meshes of penal law. But this is not all the case. The inquisitorial type also has its benefits, and in certain ways represents a superior form of procedure. The accusatorial process with its oral examination and cross-examination and its publicity, favors the individual; the inquisitorial process, with its criticisms of acts, and the initiative of the judge, favors society. In England and America, where the first type of procedure prevails, the judge remains passive. A criminal trial is there looked upon as a duel between the accuser and the prisoner; so that the judge must be inert and only declare at the end who is the victor, and who the vanquished. In a civil case, it is understood that a judge may remain passive. There, only private matters are treated. The judge hears both sides and then decides. But in a criminal case the situation is different. We cannot forget that even in civil trials procedure tends to give the judge initiative and activity in order to end the scandal of those long trials which constitute another cause of the weakness of Italian procedure.

There ought to be four fundamental directing principles in a code of criminal procedure. First: the criminal trial ought to be a technical proceeding.

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Second: there should be a modification of the presumption of innocence. Third: there must be a balance of individual and social interests. Fourth: the personality of the criminal is to be taken into account.

First:—The criminal trial must be neither accusatorial nor inquisitorial. It must be a technical proceeding. Since Lombroso threw so much light upon the natural origin of crime, the criminal trial must become a gathering of evidence, a discussion of it, and a decision upon it. At present, beyond these three steps there is the traditional occupation of measuring the moral culpability of the criminal. The measuring of moral responsibility is utopian. It cannot be done. Attempts are made, and they fail, because they necessarily must fail, since no man born of woman can measure the moral blame of a human creature who has committed a crime. I believe, on the contrary, that it is the business of a criminal trial to determine only that the crime was committed, that the prisoner is the perpetrator of it, and that he is a person more or less inclined to crime, more or less dangerous, more or less adapted and readaptable to social life. No matter whether the convicted one is insane, a first offender, an habitual criminal, a person with congenital tendencies to a criminal life, or what not, our duty is to adopt the most opportune measures of social security, instead of following the chimera of measuring his moral responsibility.

This first principle will mark the criminal law of the future. In the meantime here and there in this code it shows faint signs of life. The second principle is this: the protagonist in a criminal case is not the prisoner only, but first, the prisoner who defends himself, second, society that defends itself, and third, the victim of the crime. At this point the famous question of the presumption of innocence springs up for discussion. But that question is dependent upon the conclusion we come to. Upon the third and the fourth fundamental principles I have mentioned the classical school said that the code of criminal procedure is nothing more than a barrier against the abuse of power. This mode of looking at the code is explainable historically by reference to the tortures and the inquisitorial deformities of the Middle Ages; but it is now meaningless. To say that criminal procedure is only a barrier against the abuses of power is to mutilate in great part the realities of life, in so far as this barrier regards only the prisoner, but ignores the interests of society, and of the victim of the crime, and his family. The Positive School urges that the law must strike a balance between the guarantees of the liberty of the citizen, and the measures of defense of society.

But, now, there is a further matter to be considered, the personality of the prisoner in whom the crime he has committed is simply symptomatic of a general condition of mind and body. You cannot treat a recidivist, or an habitual criminal, in the same way in which you would treat a first offender, who, maybe, is not dangerous, and who, in fact, has been brought to this pass from motives not ignoble, or because of a fit of passion. So that even the famous presumption of innocence must prevail in the case of those who come to the bar for the first time, whose previous histories are good, who have committed crimes which do not show moral perversity, and who are not dangerous, that is, are still adapted, or easily adaptable to social life, and must weigh less in the case of others, because it is naive to proceed on the presumption of the innocence of a murderer already convicted of crimes of blood, or of an habitual thief caught *in flagrante*. This personality of the offender must be studied under different aspects. There is, first, the psychologic aspect. The defendant is to be exam-

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ined to discover the causes or the motives that have led him to crime. It is strange that we positivists who are idealists are called materialists by our opponents, who consider themselves the only genuine idealists. As a matter of fact they are materialists because they look at the crass external facts, and judge a man by them; and we are the true idealists because we cherish the mind of the individual offender, and study the causes that have moved it to action. Two persons may commit the same crime, but the moral and social condemnation may be different, according to the reasons which have stirred them to action. There is, secondly, the social aspect. Each person has a social personality, as well as a psychologic personality. The conduct of the defendant anterior to imprisonment, in the bosom of his family, in school, among neighbors, is under the reigning code, not taken into account. But it is the only criterion, in conjunction with the other two, by which penal justice may be administered without excessive sacrifice of the individual, as well as without the abandonment of social guarantees. North America, which attempts to follow positivist teachings, but rather empirically and fragmentarily, than systematically, has applied not a few of the practical conclusions of the Italian Positive School. There they have men in the public schools who examine the scholars from the physiological and the psychological points of view. The abnormal are separated from the normal to the great advantage of the school and the pupils. Hygienic methods must be employed, and methods of social prophylaxis by studying and caring for the personality of each individual, beginning with that individual when he is a child. In addition to the psychologic and the social personality of the defendant there is the judicial personality. In England where they have the pure accusatorial type of procedure this standard of a judicial personality is followed, but only empirically, because they distinguish between those who confess their guilt and those who plead not guilty. The inquisitorial process went to the absurd and inhuman extreme of seeking the confession of the guilty at all hazards. And the early criminalists like Beccaria and Voltaire rightly directed their effective shafts at such a system. But one extreme is followed by another; so that we saw the pendulum swing full to the other side. It is said that confession of itself is not enough to convict. I agree. But we must not even here exaggerate. Cases of false confessions are rare. But even these rare cases have to be taken into account, and so it is that even the code under which we live provides that when a judge receives the confession of a prisoner he is bound to examine into the surrounding circumstances, and by so doing show that the confession is true.

The new code contains an innovation which I am heartily in accord with. All crime should not be judged in the same manner. At present, if a man slaps another in the face, the same heavy machinery of the law is put into motion that is started when one man murders another. The new code provides different methods of procedure, simplifying the method in the case of misdemeanors. Furthermore, although the judge convicts and sentences summarily, an appeal is allowed the defendant. But this system has already been tried in Messina, Reggio, and Palmi, and the number of appeals has been extremely small. This shows that the convicts were satisfied with the result. They saved time and expense.

Let us now take a look at some characteristic provisions and institutions in this code. And, first, of the judicial police. These are the prime movers when

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a crime has been committed. They ought not be surrounded by aversion or distrust, but by sympathy. But the new code shows an evident distrust of the police. Section 170 says that the functions of the judicial police are to seek the crime, and to gather the information by which the criminal may be discovered. And section 182 establishes that the police may not perform any acts unless there are present two witnesses. This is truly remarkable. No wonder the percentage of crimes is so high, and that of convictions so low. Lawlessness is in the air; individual liberty is too sacred, and social welfare too neglected. But the judicial police must also find and preserve the traces, and the impressions of crime. They must, in addition, seek the criminal. And, finally, they must be acquainted with the person of the criminal—the physical person and the psychologic person. The new code upholds the presumption of innocence, and so we find that it prohibits the power of interrogation, not only to the judicial police but also to the magistrates, and the judges of the higher courts. Of course, abuses of the power of interrogation may obtain where it is given; but the abuse should not determine the principle. The remedy for the abuse is the change of officers. The interrogatory procedure is not only a means of social defense, but it is also a source of proof.

Another provision of the proposed code I must refer to. The accused has a right to be defended by counsel at the examination, that is, at the preliminary hearing, before a formal charge is laid against him. This does not seem to me to be necessary for the liberty of the individual, nor conducive to the protection of society. The new code makes it incumbent upon the magistrate to inform the prisoner that he is at liberty to speak or not to speak, and that he is entitled to consult with counsel first. The innocent cannot be benefited by such a course; but the guilty are surely given a chance to escape. After preparation and consultation the defense is stronger. But in almost all cases of innocent persons, the speaking out immediately cannot hurt. Innocent persons have no need of subterfuges and reservations to show the evidence of their freedom from guilt.

Penal actions are by the new code granted to certain associations constituted to further the public welfare, and to certain individuals in special cases. The power of individuals to initiate penal actions should be limited. We see that even Anglo-Saxon countries, like England and America, where private accusation is the rule are moving in the direction of instituting functionaries of state who have exclusive power in penal actions.

Still another provision I think good; the provision, namely, which makes it possible for a complaining witness to ask for civil damages in a criminal action; and for a judge to award those damages. But I believe we ought to go further. Damages should be demanded by the state; the state should protect the individual's civil rights as well as his criminal rights.

Under what conditions shall bail be given? Up to the present the criteria have been two; the kind of punishment, and the kind of crime. But I believe there ought to be a third criterion—the personality of the criminal. Evidently, if the prisoner is a recidivist, an habitual criminal, or a dangerous one, bail should be restricted, much more than if he is an occasional criminal, or one not dangerous, or one who has a good history. And as for judges in the Assize Courts shall we have three or one? I believe one is enough; the others are superfluous. No good can flow from a fount where responsibility is divided. At

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present, as a priori reasoning would have led us to expect, it is only one, the chairman, who does the work; the others are ornamental.

I must refer to the provisions in respect to the jury. My ideas on the jury system are well known. I am not in favor of it. Justice is a matter for judges. Each man must follow his own trade. Citizens must do their own business. But we have jurors, and we have to discuss the law in relation to that established fact. But one of the reasons why juries do not act rightly now, is that they do not know the penal consequences of their verdicts. Often in my practise have I come to know that jurors set prisoners free because they are afraid that if they convict the defendants the latter will get a punishment which the jurors consider too severe for the crimes. The judge ought, therefore, to explain what the penal consequences of the verdict of the jury will be.

The last point I shall take up is that of expert testimony. There is no doubt that the long discussions, and the wrangles among insanity experts are due to the fact that they are required to give opinions as to that which they ought not to be called upon to consider, namely, the moral responsibility of the prisoner; that is, if he had a free will at the time of the commission of the crime. Insanity experts should be allowed to testify only as to whether the accused is or is not of sane mind.

I am not, as you see, in entire accord with the proposed Code of Criminal Procedure. I should like to see something more advanced, more approaching the ideal. But the future will, no doubt see such an approximation to an ideal code. At present I vote for the proposed code because I believe it marks a long step in advance of the old one. In passing this law we shall do our duty in giving the Italian people, even in such a difficult and delicate field as penal justice, the preparation for higher and nobler destinies.

R. F.

Constitutional Amendment Adopted in Ohio Relating to Criminal Law.—The people of the State of Ohio expressed their opinion on September 3, 1912, on forty-one amendments which were submitted to them. Only four of these amendments relate to criminal law and procedure. We consider it a distinct gain that amendment No. 3 was adopted. This amendment gives the right to the state to take depositions in criminal cases and authorizes counsel also to make comment on the failure of the accused to testify. It reads as follows:

ARTICLE 1, Sec. 10. "Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court.

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No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense."

Amendment No. 15 authorizes the legislature to pass laws for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings. This we consider a very salutary measure which will expedite the trial of criminal cases, will tend to uphold the dignity of the courts and will minimize the farcical juggling of experts and the endless cross-examinations by counsel.

Amendment No. 2: "Abolishing Capital Punishment" was lost.

Amendment No. 17 abolishing prison contract labor will bring about beneficial results in prison administration, also. The text of this amendment is as follows:

"Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory while under sentence thereto, shall be required or allowed to work at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory without the State of Ohio, and such goods made within the State of Ohio, excepting those disposed of to the state or any political sub-division thereof or to any public institution owned, managed, or controlled by the state or any political sub-division thereof, shall not be sold within this state unless the same are conspicuously marked 'prison made.' Nothing herein contained shall be construed to prevent the passage of laws providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political sub-division thereof, or for or to any public institution owned or managed and controlled by the state or any political sub-division thereof."

The official vote of every county in Ohio, save Paulding, shows that 257,154 voted for the abolition of capital punishment and 302,244 voted against the amendment.

The amendment regulating expert testimony fared comparatively best. It received 335,592 votes and 184,706 votes were cast against it.

Amendment No. 3 (depositions by state in criminal cases, etc.) did not receive such a majority, 290,540 voting for it and 226,687 against it. The amendment which abolishes prison contract labor received 331,725 for and 213,948 votes against the amendment. We may also add that only 55% of the registered voters have cast their ballots at the special election.

HUGO E. VARGA of the Cleveland, O., Bar.

Legislation in Iowa Compared with the Law Proposed for the Suppression of Vice in Illinois.—The following letter from Professor Elmer A. Wilcox of the faculty of law of the University of Iowa and Associate Editor of the JOURNAL was addressed on December 3, 1912, to the Managing Editor in response to a request for information respecting the operation of legislation pertaining to the social evil in Iowa, and for a comparison of the law proposed for Illinois by the Vigilance Association with that in force in the state of Iowa:

"I have compared the bill below with the corresponding Iowa statute, and have indicated all differences that were discovered, excepting the change from county attorney to state's attorney made because of the difference in the name

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of the corresponding office in the two states. In substance there seems to be no difference excepting for the omission of the \$300 tax from the Illinois bill.

"This act does not seem to have been used much. Perhaps the lack of private organizations for the suppression of vice may account for this, and greater use would be made of it where such organizations exist. It is possible also that greater use has been made of it here than my information indicates.

"Considerable use has been made of the so-called 'Cosson Law' under which any five electors of the county, the county attorney, or the attorney general may, and the attorney general, if ordered by the governor, must, bring an action in the District Court to remove any county attorney, sheriff, mayor, police officer, marshal or constable, for wilful or habitual neglect of duty, misconduct in office, corruption, extortion, conviction of felony, or intoxication. A few removals have been made and in many more cases a threat of proceedings has stirred reluctant officials into activity.

"Two other acts, one imposing upon the keeper of a house of prostitution from one to five years in the penitentiary for permitting any unmarried female less than eighteen years old to live, board, stop or room in such house; the other giving from one to ten years to any person who shall detain any female, against her will, in any room, or house, building or premises for purposes of prostitution, would seem to cover vital phases of the evil."

ELMER A. WILCOX.

The following is the proposed bill to suppress houses of ill-fame in Illinois. The arabic figures refer to Professor Wilcox's notes at the conclusion of the bill by which the reader can draw comparisons with the Iowa law:

A BILL.

FOR AN ACT to enjoin and abate houses of (ill-fame¹ lewdness, assignation and prostitution, to declare the same to be nuisances, to enjoin the person or persons who conduct or maintain the same, and the owner or agent of any building used for such purpose.²

Section 1. Be it enacted by the people of the State of Illinois represented in the General Assembly: that whoever shall erect, establish, continue, maintain, use, own or lease any building, erection or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building, erection or place, or the ground itself, in or upon which such lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

Sec. 2. Whenever a nuisance is kept, maintained, or exists, as defined in this act, the state's attorney or any citizen of the county, (represented by any attorney he may select,)³ may maintain an action in equity in the name of the people of the State of Illinois, upon the relation of such state's attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court or a judge in vacation shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if it shall be made to appear (that the nuisance exists)⁴ to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testi-

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mony or otherwise, as the complainant may elect, unless the court or judge, by previous order shall have directed the form and manner in which it shall be presented. Three days' notice in writing shall be given the defendant of the hearing of the application, (for the temporary writ,)⁶ and if then continued at his instance, the writ as prayed for shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the judicial district in which it was issued and any violation of the provisions of injunction herein provided shall be⁶ contempt (of court,)⁷ as hereinafter provided.

Sec. 3. The action when brought shall be triable at (once)⁸ after due and timely service of the notice has been given, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the state's attorney in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the state's attorney to prosecute said action to judgment, (or)⁹ any citizen of the county¹⁰ may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen.

Sec. 4. In case of the violation of any injunction granted under the provisions of this act, the court, or in vacation, a judge,¹¹ may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section, shall be punished by a fine of not less than Two Hundred Dollars (\$200) nor more than One Thousand Dollars (\$1,000) or by imprisonment in the county jail (for)¹² not less than three or more than six, months, or by both fine and imprisonment.

Sec. 5. If the existence of the nuisance be established in an action as provided in this act (on the application for an injunction or in a proceeding for contempt,)¹³ an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released, (as hereinafter provided.)¹⁴ If any person shall break (or)¹⁵ enter or use a building, erection or place so directed to be closed, he shall be punished¹⁶ for contempt as provided in the preceding section. For removing and selling the movable property the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

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Sec. 6. The proceeds of the sale of the personal property as provided in the preceding section, shall be applied in payment of the costs of the action and abatement, and the balance, if any, shall be paid to the defendant.

Sec. 7. If the owner appears and pays all costs, (fines, penalties and forfeitures)¹⁷ of the proceeding(s)¹⁸ and files a bond with sureties, to be approved by the clerk, in the full value of the property, to be ascertained by the court, or in vacation by (appraisers appointed by)¹⁹ the clerk,²⁰ conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation, the judge may, if satisfied of his good faith, order the premises closed under the order of abatement, to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property.²¹ The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty or liability to which it may be subject by law.

Sec. 8. (Whenever a fine may be assessed by the court for the violation of an injunction as provided in section four of this act, it shall constitute a lien upon the real estate upon which the acts constituting the contempt shall have been committed, and an order of execution shall issue.)²²

(1) Not in the Iowa law. (2) The Iowa law inserts here as follows: "and to assess a tax against the person maintaining such nuisance and against the building and owner thereof." (3) Not in the Iowa law. (4) Not in the Iowa law. (5) Not in the Iowa law. (6) The Iowa law inserts here: "a." (7) Not in the Iowa law. (8) Here instead of the word "once" the Iowa law inserts: "the first term of court." (9) Here instead of the word "or" the Iowa law inserts: "and if the action is continued more than one term of court." (10) Here the Iowa law inserts: "or the county attorney." (11) Here the Iowa law inserts the word: "thereof." (12) Not in the Iowa law. (13) Not in the Iowa law. (14) Not in the Iowa law. (15) Instead of "or," the Iowa law has "and." (16) Here the Iowa law inserts "as." (17) Not in the Iowa law. (18) The Iowa law has the word "proceeding." (19) Not in the Iowa law. (20) Here the Iowa law inserts: "auditor and treasurer of the county." (21) Here the Iowa law inserts: "and if the proceeding be an action of equity and said bond be given, and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only." (22) This section is not in the Iowa law. The law there provides for the assessment against building and grounds, the person maintaining the nuisance, and the owner or agent of the premises a tax of \$300.

E. A. W.

Giacomelli's Argument on Libel Committed "for the Common Good."—*Il progresso del diritto criminale* in its September-October issue has published the conclusion Giacomelli's *Il fine nella diffamazione*, begun in the preceding chapter. The article is a refutation of the positivistic and neo-socialistic plea of truth in libel—to be more accurate it is an argument against the theory advanced by the socialists that a libel committed *pro bono publico*, or to be more socialistic in phrase, in the best interest of the people, is to be commended and not condemned. While the practical answer, that the definition of the best interest is of too difficult determination to predicate the right of privacy upon, seems full and sufficient, yet Giacomelli's many other reasons *contra*, both practical, technical, and philosophical (to make a third and unjustifiable division)

GIACOMELLI'S ARGUMENT ON LIBEL

are most interesting. It is well to remember that the philosophy of law has reached a higher degree of general development in Italy than elsewhere, because of the long study and careful attention given to the revision of the code, and that, therefore, the average mind is more susceptible to philosophical reasoning and more adapted for scientific treatment of practical questions. While this, on one hand, leads to hyper-refinements, on the other, it avoids many difficulties in practise by forcing legislation to conform to recognized requirements.

Giacomelli's "Intent in Libel" is worthy of a detailed review, because of its consideration of specific and general intent and of its treatment of the relative consideration due the individual and society in conditions where a trespass is justified by a plea of public welfare.

In libel the specific intent is to harm another's reputation. It is superadded to the general intent, which is but the free publication of the fact, insufficient in itself without the legal presumption. In libel, as in every crime, there are two requisites; a minimum of either may destroy punibility, a specific intent and an objective fact. (*Del Vecchio*, "The Formal Basis of Law," Boston, fact). These exist when a defaming article is published with the object of discrediting anyone. (The presumption of the intent from the act is but a law of evidence, by which proof is waived of what common sense cannot refuse to believe). So in homicide, wilful killing is murder. No ulterior object, such as the murderer's desire to provide for his offspring affects the specific intent. While, philosophically, the object and intent are the same, legally they are very different, and the latter simply denotes the consciousness of the immediate and unavoidable consequence of the act. But, to return to our subject, it is obvious that the specific intent to wrong can co-exist with a good general object. Giacomelli's sketch shows this to be true as far as law, which deals with the regulation of human action so that each man may have the greatest freedom consistent with the similar freedom of all. And yet this simple fact has been denied by many great men. The error was due to a mistaken conception of the legal sphere, whose definition by Spencer, the greatest modern sociologist, we have just given. Law can only consider the illegality of a fact, that is, the positive detrimental force it exercises over social co-existence, it cannot consider the relative subsequent results of a wrong committed to prevent a greater wrong, save in the prevention of irreparable injury to the so-called natural rights. Thomas Aquinas wrote "Considerandum est autem quod quandoque aliud est finis operandi et aliud est finis operis." In other words, the Jesuitical maxim that the end justifies the means cannot be recognized. A wrong cannot be the philosophical solution of a dilemma. This is philosophically true, but even its consideration is extra juridical.

To give our opponent's brief—for they have some apparent if specious reasons—we can say in the first place that they claim three elements in libel, will to publish, will to harm and anti-social will. This last they made an element of all crime. Even if we accept their premises, we may not accept their conclusion; but we cannot accept their premises. The anti-social will cannot be a general vague desire to hinder the millennium, and it cannot be a minority belief in the virtue of the destruction of albinos, for example. In other words, it is too vague to be made a rule of conduct, and in the second place, society, whose protection is the object of law, cannot be predicated on the right to commit objective wrongs with knowledge of this wrongfulness. The enforcement of

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right must be rigid. The definition of right, while reformable through philosophy, sociology, and ethics, cannot be legally disregarded. But our case does not lie in the weakness of the proponents of change. For, even if truth of fact and worthiness of object accompany the libel (which in the case of public men is sufficient under English law, with the added proviso, however, that the libel is based on facts relative to public interest), still the act is criminal. In the first place, the matter can be legally tried in court. (This is a practical course in Italy, and it is submitted should be our answer here). In the second place, the accused is deprived of all defense if this method of attack is allowed. How can he question the truth of the statement, when it may not come to his knowledge for months? We have already noted a third objection as to what is best for society, *tot homines, tot opiniones*. A fourth technically philosophical reason lies in the fact that the neo-positivistic position is that of Scholasticism. In his "Summa Theologica," Thomas Aquinas wrote that acts *habent rationem boni ex ordine ad finem* (II II, xxxiiij, VI).

The faults of the older school have been pointed out too often to require repetition. The positivists now become more metaphysical than self-confessed metaphysicians, pardon those who do objective harm because of their subjective state.

But, to come back to positivism ourselves, Giacomelli, after developing at length the reasons, which we have sketched above, then outlines the different proposed reforms based thereon, and concludes "that the subjective purpose of universal benefit, that the belief, in other words, however reasonable of acting for the common good cannot make liberal a legal act, because, consisting in an attack on another's reputation, based on the nature of the facts alleged, it can and ought to be founded, subjectively considered, on the general intent of the will to make an unprivileged statement and the specific intent of the knowledge of and will to do a legal wrong," and that, therefore, the proposed changes, allowing a defense of a good general intent should not be considered. While this is not fully in accord with American principles, it seems to the reviewer to be sound. And, it is with regret that he can but say that the Italian propounders of reform cannot cite American politics as a proof of the legitimacy of this position with even the same probative force as a year ago. J. L.

Dr. Mueller's Criticism of German Criminal Code.—Dr. Arthur Mueller of Karlsruhe contributes a valuable philosophical, analytical and historical discussion of the so-called crime against nature by way of criticism of the preliminary draft of 1909 of the German Criminal Code to *Archiv Für Strafrecht und Strafprozess*, Bd. 59.

This is not a pretty subject, and the legislator naturally has been unwilling to explore the sexual perversions of Sodom and Gomorrah. The German draft is no more specific than our own statutes, which with the briefest designation of the crime dismiss it with a strong adjective, expressive of profoundest feelings of disgust. Plato long ago furnished the philosophical argument against this attitude, and the legal expert can no more scientifically justify a glossing over of an abomination of this sort, affecting as it does the welfare of the subjects of the State, than could medical learning refuse to take note of and investigate the loathsome diseases of the human body. The German version substantially is no more than a translation of the prescription of the Frankish Capitularies of 789,

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which provides heavy punishment for those *qui cum quadrupedibus vel masculis contra naturam peccant*; and it throws the labor of fixing the limits and essence of this crime on the courts as the cases arise, with the excuse that greater clearness of statement is impossible. The treatises of Meyer, Olshausen, and von Liszt do not appreciably help matters.

The writer proceeds to make clear the conceptual reality underlying the *legis ratio*. How necessary such a procedure may be is apparent when it is seen that in earlier times sexual commerce between Christians and non-Christians (particularly Jews) was regarded so far against nature as to be punishable by death. But merely a conceptual treatment of the subject is not enough except to clear the ground and to make a fresh start. A great flood of light is afforded by experience, history, psychology, and anthropology. The contributions of Havelock Ellis in our own language in this isolated field of study learnedly demonstrate this proposition. In view of the absence of definite statutory precision, and due to the scientific questions involved, the competence of legal medicine in an important way is clearly suggested.

Punishment of crimes against nature is based on three grounds; the interests of State police, criminal policy, and social ethics. The draft makes the first ground the most important in its stringent demand for punishment. The reasons given do not, however, bear out well in the writer's critical examination except in the danger of these offenses to the youth of a country. On the ground of criminal policy, the question of abolishing punishment is considered on account of the dangerous possibilities of extortion. The writer suggests instead more severe punishments for the parasitic offense. The draft follows the ideas of Mittermaier in looking at these crimes as social-ethical offenses. They violate only pseudo-legal interests, and are not to be classed with such crimes as theft or embezzlement.

Reasons are advanced by medical men, sociologists, and ethical writers against punishment. The first in especial assert that many sexual perversions are committed by abnormal persons who should not be ground up by the legal mill, but treated by the physician. They arrive at an insupportable generalization that homosexuality generally is the mark of those of limited responsibility, and for this reason should be exempted from criminal process.

Jurisprudence is the one science which finds it necessary continually to re-examine the bases for its propositions. "No chemist first undertakes an investigation of the nature of force in making a chemical analysis; and no physiologist speculates about the nature of matter preliminary to the study of secretions of the liver." (Jellinek.) No department of criminal science has gone further in the method of procedure contrary to the other sciences, and a large part of the writer's essay is devoted to a review of the writers and the theories dealing with the necessity or justification of punishment, and the agencies of the State which should be charged with official power in a treatment of the offenses under consideration. So far as it affects adults, the writer puts the crime against nature in the same category as punishment of witches, and the use of the rack; and he commends the lawgiver to the Swiss legislative model. The reference to Switzerland will be generally approved, but the other conclusion profoundly shocks many preconceived ideas. Whether right or wrong, the statement will at least lead to a new line of thought. That alone is an advantage.

A PROGRESSIVE DECISION

It is interesting to note the use that has been made by the writer of such books as Stammler's *Die Lehre von dem richtigen Rechte*, Ihering's *Der Zweck im Recht*, and Kohler's *Lehrbuch der Rechtsphilosophie*, all of which, by the way, are soon to appear in our own tongue. This calls to mind the statement made by Sir John MacDonnell (Berolzheimer: "The World's Legal Philosophies," xxvi). "Only certain minds feel strongly the need of a complete conception including all phenomena in a particular region, a clear view of all the facts and their fusion into a whole. Those who have been bred in the study of English law rarely experience this need." It may be hoped at least that in every department of crime the spirit of inquiry will so far assert itself that not even so hideous a thing as the obscure crime against nature will be passed over with the feeling of unspeakable aversion inspired by religious tradition, as unworthy of scientific consideration and treatment.

ALBERT KOCOUREK, of the Chicago Bar.

Balch on International Courts of Arbitration.—The republication of Thomas Balch's "International Courts of Arbitration," by Thomas Willing Balch (Philadelphia, 1912), which was originally published in 1874, and contains letters and deliberations concerning the arbitration of the Alabama claims, is of interest to that number of criminologists, who are interested in criminal law as it affects legal philosophy. It shows the development of international law, by marking an earlier stage, before Hague Conference or "literature" on the subject had made the phrase a household expression. It further shows the occasional character of legal growth. It is a small book of great interest to legal philosophers, not because of its instructiveness, but by way of illustration. and to them we recommend it.

J. L.

Suspension of Sentence.—The Supreme Court of Kansas, in July, 1912 (*State of Kansas v. Sapp*, 87 Kansas 74 D) has decided that "Whenever a verdict or plea of guilty has become final, the court is under an absolute duty to pronounce sentence, and has no discretion, as a disciplinary measure, to suspend it. The rule applies notwithstanding the sentence purports to be suspended until a certain date, for the purpose of retaining control of the defendant. who is ordered to appear at that time and show that he has not violated the law in the interval" (Syllabus). This duty (to pronounce sentence) is violated whenever an order it made the purpose and natural effect of which is that the defendant shall understand that he may never be punished (opinion 742). Then the court is really exercising a power of parole which does not belong to it except as conferred by statute." Kansas since February, 1907, has a law permitting judges to parole after sentence for misdemeanor.

J. C. RUPPENTHAL, District Judge, Russell, Kansas.

A Progressive Decision.—In affirming recently the conviction of Charles Katz for grand larceny, the Appellate Division, First Department, of the Supreme Court of New York said: (*New York Times*, Dec. 21, 1912.)

"We should hesitate long before overturning on a mere question of veracity a verdict reached by such a jury, especially when the defendant was represented, as in this case, by counsel of long experience in criminal trials and one of unquestioned energy and devotion to his client's cause.

"So long as the verdict is not clearly against the evidence, and it appears that the defendant has had a fair trial before an impartial judge and an intel-

RIGHT OF TRIAL COURT TO REVIEW EVIDENCE

ligent jury of his own selection, as well as the aid of competent counsel, we cannot feel that it is our duty to reverse the conviction, because perchance, if we had been sitting as jurors, we might have decided differently. We are satisfied that the conviction was without legal error and was justified by the evidence."

This is a sound and sensible viewpoint and indicates the growing, if somewhat belated tendency of our appellate courts to take a sane and rational stand. Reversals on technicalities are becoming rapidly unfashionable even in jurisdictions which oftentimes were wont to sin in the most approved orthodox fashion. That delay of justice is tantamount to denial of justice bids fair soon to become universally recognized.

I. MAURICE WORMSER, University of Illinois.

Right of Trial Court to Review Evidence in Kansas.—The following correspondence with Judge Ruppenthal is self-explanatory.—[Eds.]

The statement that the trial court may review the evidence in Kansas may perhaps be considered sustained by two cases. "The court has the right to present the facts in its charge to the jury, but must inform the jury that they are the exclusive judges of the facts." *Horne v. State*, 1 Kansas 42. "The court may review and present the facts in a criminal case, provided the jury are informed that they are the exclusive judges of every question of fact." *State v. Baldwin*, 36 Kansas 1. But these cases, which seem to be the only ones giving expression to such views, can hardly be deemed strong enough to warrant the conclusion that in Kansas the trial court "may comment upon the evidence." (See 3 Journal 569, November). Certainly attempt to "comment" is very rare in practice, and the "comment" feeble.

In the *Horne* case, above cited, the court used the words "this murder," and the case was reversed because this was held to be an expression which the jury could take to be the court's opinion. The supreme court said: "All persons familiar with the trial of criminal causes have had occasion to observe with what anxiety a jury listens to catch from the court the slightest indication of its views. This is particularly the case when matters of great doubt and difficulty are before them for decision. * * * The more able and upright the court, the more likely are its intimations to have weight."

In *State v. Hughes*, 33 Kansas 23, where the judge in the presence of the jury directed two witnesses of defendant to be prosecuted for attempting to bribe a witness, this was held to be an expression of opinion concerning credibility and weight of testimony that could not be corrected by an instruction later that alleged misconduct of a witness should not prejudice defendant.

As recently as 1911, in *State v. Truskett*, 85 Kansas 804, the lower court was reversed for instructing that there was no evidence tending to justify the homicide, (together with refusal to instruct on self-defense). The supreme court in its opinion said: "It is not decided that the court may not in a proper case, where the direct facts showing the commission of a crime are given in evidence by those who witnessed the occurrence, state to the jury that there is no evidence to sustain a particular issue."

By reason of the foregoing, and perhaps other decisions, trial courts make but little use of the implied permission of the criminal code (§236). * * * If he (the judge) presents the facts of the case, he must inform the jury that they are the exclusive judges of all questions of fact."

RULES FOR CLERKS OF THE DISTRICT COURT

(By your kind invitation of December 28, I submit the above. On investigation I find there is more authority for reviewing the evidence than I had thought. But I am sure little use is made of such supposed authority.)

J. C. RUPPENTHAL, District Judge, Russell, Kansas.

Rules and Suggestions for Clerks of the District Court of the Twenty-third Judicial District of Kansas. (See Secs. 2246 and 6337, Gen. Stat., 1909). 1. Each clerk of the District Court shall at all times have one or more duly appointed and qualified deputies, so that no occasion can arise at any time when proper process of court cannot be secured, Sunday or week-day, day or night.

2. Each clerk shall keep posted in his office, and also outside the door when the office is locked, the name of his deputy or deputies, and the place where he and they reside, or board and room, and where they may usually be found.

3. When a clerk absents himself from the county seat, he shall leave word posted up by his office, stating who is his deputy meantime, or where the clerk himself may be found.

4. Each clerk shall keep his office upon for the transaction of official business at least eight hours between 7:00 A. M. and 6:00 P. M. each day, except Sundays and legal holidays. The clerk shall post notice of his office hours conspicuously in his office. (See Sec. 2301, G. S. 1909.)

5. Clerks are authorized in their discretion to let files of papers from the files be taken from the office, or they may wholly refuse to let files, or any part or paper thereof, be taken out by anyone. No one, except members of the bar and the stenographer shall be permitted to take away any papers or files, except by express written order of court, provided that bonded abstracters may be permitted to take files or papers affecting real estate titles. Receipts shall always be taken before any paper or file may be withdrawn.

6. When appeals from the action of the county board, or county officers, are taken, as in road cases, surveys, etc., when the case is finally determined by the district court, the clerk shall return to the proper office, as of the county clerk or the surveyor, etc., any and all papers and files properly belonging in such county office, and file in lieu thereof the receipt of the proper officer for such files so returned.

7. When a mandate is received from the Supreme Court, determining cases appealed from the district court, the Clerk shall at once enter and spread at length such mandate upon the journal of the court without waiting for the district court to be in open session and to order such mandate spread. But the court should later order and approve the action of spreading the mandate on the journal.

8. All journal entries and orders and decrees of the court shall be recorded promptly by the clerk in the journal. Even when court is in session, this shall be done as far as practicable from day to day. (See Sec. 6327, G. S., 1909.)

9. All entries of whatever kind made upon the journal shall be diligently compared with the original order; judgment or decree, so as to avoid error and omission. In comparison, one person must read the original, and another person follow the copy upon the permanent record or journal, or vice versa.

RULES FOR CLERKS OF THE DISTRICT COURT

10. All journal entries, decrees and orders shall be indexed at least by the plaintiff's name, or by the name of the party in ex parte actions.

11. No journal entry, decree, order or judgment, or what purports to be such, may be entered upon the journal unless duly and properly signed by the judge of the court, excepting only mandates of the Supreme Court as already required.

12. Oaths and affirmations shall be administered solemnly and deliberately. If there be doubt whether the person adjured understands English, the oath or affirmation shall be translated into his own language as administered. As far as possible, witnesses, jurors and others shall be sworn or affirmed several at a time rather than separately.

13. The safety vaults containing court records shall be left open only when under the direct observation of the clerk or a deputy clerk (or of some county official who is permitted to use the same vault, where two or more officials must use one vault). At least the inner doors of the vault shall be closed if the clerk or other official leave the room leading to the vault. The outside vault doors shall always be closed when the clerk (or other officials) leave the court house, and shall be both closed and locked always over night, Sundays and holidays.

14. When court is in session, and the files of cases are taken to the court room, they shall all be replaced in the vault each night. Files of cases shall not be permanently left outside the vault at any time.

15. All records shall be written in legible handwriting with good black ink, or shall be typewritten with non-fading record ribbon, or non-fading ink, other than red. Journals may be written with a typewriter on loose leaves, and these inserted in a loose leaf record cover of a kind whereby the leaves can be securely and permanently locked when the book is filled.

16. Each case shall be given a number in figures (Arabic numerals) when the petition, transcript or other initial paper is first filed. (See Sec. 6326, G. S. 1909.) These numbers shall be consecutive and in progressive numerical sequence as cases are filed. It is better to have only one series of numbers, rather than to attempt to number civil and criminal cases separately.

17. If a case inadvertently fail to receive a number when filed, or shortly afterwards, it should as nearly as possible be given the number that ought to have been given to it when filed, with the addition of a suitable letter, as "No. 480;" "No. 514B."

18. The files of successive cases shall be placed in the metal filing cases, or the pigeon holes, or otherwise as furniture may be provided by the county board, and such files shall be arranged in regular, numerical order, so that the files of any case may be readily found at any time, if its number be known.

19. As each new paper is filed, it shall be endorsed with the number as well as the name of the proper case. (See Secs. 6332 and 6333, G. S., 1909.)

20. In making up the trial docket, the cases should be entered consecutively as numbered, but should be classed into, 1. Criminal, and 2. Civil, placing state and city criminal cases in the first class, and all others in the second. But the state cases may well be bunched together; then city cases likewise; and in civil cases, the clerk may bunch divorce cases, and also any other kind that may chance to form a large class.

RULES FOR CLERKS OF THE DISTRICT COURT

21. If at any time a case be found, or files, or papers thereof, which case has not been entered on the proper appearance docket, it shall be entered at once on such docket as nearly as possible at the place where it belonged when the case was first filed, and such case shall at once be numbered and indexed.

22. The clerk shall answer promptly all correspondence and communications from attorneys and litigants respecting their several cases, if return postage is provided, or messages by telegraph or telephone guaranteed to be paid, or if the applicant appear personally or by special messenger.

23. At least once after each regular session of court, the clerks shall sort over all legal blanks of every kind provided in their office at public expense, or for general court use. They shall see to it that all such blanks are properly arranged under suitable labels or headings. If any blanks are found which have become obsolete, or are of doubtful usefulness, the clerk shall call the court's attention thereto, that the worthless blanks may be removed or destroyed.

24. Blanks should be kept in such filing cases, pigeon holes, or other receptacles as the county board may have provided. As far as possible, each form of blank should preferably be in a separate, flat drawer, or at least a separate pigeon hole. All blanks of the same kind should be kept together. Blanks should be laid flat, and should not be rolled nor crumpled nor laid uneven so as to wrinkle them, or turn up the margin or corners of any sheet. When sorted, the tabs, or bunches of blanks should be wiped with a dust cloth.

25. No official's personal name should be printed in any blanks, or in any public record.

26. All miscellaneous papers and files, whether new or old, in the office of the clerk of the district court, shall be examined and sorted at once, and arranged according to their nature. They should be examined after each term of court hereafter, to see that no paper belonging to the files of any case is lost, mislaid or out of place among miscellaneous papers not properly belonging to the files of any regular case. Any and all papers found upon such examinations and sortings, including affidavits, depositions and exhibits, that belong to any case, shall be placed in the files of such case, unless of such irregular size as to be incapable of being enclosed in the ordinary filing cover, except as provided in the next rule, and in such event a memorandum slip in the files should refer to the excluded papers. (See Secs. 2246 and 2307, G. S., 1909.)

27. All papers relating to any one case shall be kept together and filed in one filing case or wrapper, except that bonds on appeal or for costs or for appearance, etc., notes, mortgages and other obligations and instruments sued on, or in judgment, may be separately filed in an orderly way in a specially secure place within the safety vault, but where any such paper is so separately placed and kept, a proper memorandum shall be placed in the files of such case, stating that the paper or instrument (naming it) is abstracted from the files, and may be found at the designated place of security. (See Sec. 6332, G. S., 1909.) At the close of each session of court, the clerk shall examine and sort the files of all the cases which have been before the court as such session, in order to see that each separate paper shall go with the files of the case to which it belongs.

28. Filing cases of tough manila paper, commonly called court wrappers, or reversible cases, are preferable to square-cornered box files, as the flat kind

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are expansible to fit the needs of the case, however large, and of saving of vault space. (See Sec. 6333, G. S., 1909.)

29. For furniture of safety vaults, steel is safest from fire danger; also freest from vermin and dampness. Steel roller shelves with books laid flat, offer least wear and strain to the heavy records. Steel filing cases afford the best method of compressing files of cases into least space.

30. Jurors, witnesses, interpreters, and any other persons claiming fees at court, should be required by the clerk to sign a statement or certificate by them respectively (and to verify would be better) that such claimant has performed the service claimed for, and necessarily has traveled or has to travel by the most direct, feasible route the distance that mileage is claimed for, and where a certificate or statement is issued by the clerk of the court to the claimant, a stub, giving the foregoing facts, shall be kept, or better still, a carbon copy of the claim as signed or verified.

31. Clerks shall tax a jury fee of \$6.00 as costs in each civil case in which a jury returns a verdict. (See Sec. 3692, G. S., 1909.)

32. Clerks shall tax a stenographer's fee in each case in which a stenographer is used of \$2.00 for each day. (Sec. 2404, G. S., 1909.)

33. No fees shall be taxed for the same person for the same time, or same mileage in two or more cases, nor for service as both juror and witness or in other double capacity, nor for any public officer locally where the state, county, city, etc., is party. (Secs. 3673 and 3674, G. S., 1909.)

34. When a judgment in foreclosure of a real estate mortgage has become final after the sale of the property, or after payment of the debt, the clerk shall enter the proper statement of satisfaction on the margin of the record of the mortgage in the office of the register of deeds of his county. (See Sec. 5207, G. S., 1909.) Clerks shall also, whenever an instance is found or called to notice, enter such satisfaction as to all mortgages heretofore foreclosed in their courts in which such entry should have been made, but was not made.

35. When real estate is partitioned, the clerk shall promptly report details of the decree to the county clerk as prescribed by Section 19, Chapter 316, Laws of 1911.

36. No books, records or blanks should be ordered or bought except where clearly required by statute, or ordered by the court, and then only in moderate quantities, and not greatly in advance of actual needs. A record book need not be on hand over two months in order to properly season for use, if handled carefully thereafter and kept under pressure for some time. (See Sec. 6325, G. S., 1909.)

37. In ordering books, blanks, and supplies, clerks should bear in mind the express purpose of the Legislature to establish a uniform system in the keeping of public records throughout the state, and should do nothing that would tend to defeat or avoid the object of the letter and spirit of Chapter 303, Laws of 1911.

38. Neither blanks nor books of any kind pertaining to the court work or its records should be discarded or destroyed because of slight changes in law or practice, unless the change makes it dangerous to rights to continue use of said blanks or records. All blanks and records or forms that have become wholly obsolete or illegal, should be called to the attention of the court and

PROOF OF HANDWRITING STANDARDS

upon approval of court or judge, such blanks may be destroyed and such forms and records discontinued from further use.

39. All blanks of any one kind should be fully used up before opening up and using new supplies of the same kind. All books should be filled to the last page before making any entry or recording in a similar new book.

40. All books when filled and no longer in active, current use, should be kept in the less convenient parts of the safety vault as long as possible. When need of more room or newer and current business requires the removal of older records, they should be stored safely in storage vaults of the county. If there are no storage vaults, or if these are full, all bound records which cannot be kept in the vault which is in daily use, should be sent to the State Department of Archives in the Historical Society Library at Topeka for preservation, and from which, when needed, such records or certified copies thereof, may be legally secured. (See Secs. 8006, 8007 and 8009, G. S., 1909.) No bound book nor file of the office should ever be destroyed or exposed to danger of loss or destruction.

41. At the close of each official year, on the second Monday in January of each calendar year, the clerks shall make and transmit a report in writing to the court (or to the judge, if court is not in session), giving the aggregate amount of all moneys on hand, and setting forth in detail from whom and for what purpose such moneys were received, and to what cases respectively the items severally belong, and where such moneys are kept. A similar report shall be made and presented to the court at the opening of each and every regular term of court. The first report made hereafter shall state the amount of moneys of the office received by the clerk from his predecessor in the office.

42. Funds of the office of the clerk of the district court should not be mingled with any other funds, private or public. All official funds should be deposited in some bank or banks in the name of the office or of the clerk as such official, and not as a private individual. A clerk should never apply public funds for private use, however temporarily, nor check for any private purpose on the funds of the office.

43. The rules of court as revised September 1, 1911, and also these rules and suggestions, shall be entered in full on the journal of the district court in each county of the district forthwith.

J. C. RUPPENTHAL, District Judge, Russell, Kan.

Proof of Handwriting Standards.—In a case in the Queens County (N. Y.) Supreme Court, at Long Island City, an interesting ruling relating to evidence of handwriting was made by Justice Maddox recently. The case was an indictment of one Phillips, involving alleged fraudulent contracts for the city. It was claimed that the bids on which the contract was awarded were "dummy bids" made out in the handwriting of Phillips. To lay a foundation for expert testimony on the subject of handwriting the prosecution attempted to introduce standards of Phillips' handwriting to serve for comparison. According to the newspaper reports of the trial, Justice Maddox ruled that the only standard which could be received in evidence must be one the witnesses actually saw written. If correctly reported, this ruling would seem to apply a stricter requirement in regard to such proof than has been the tendency recently. It has been quite generally held that the standard writing offered must be proved to be genuine by "very

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clear" testimony and that the opinions merely of witnesses that it is genuine do not afford sufficient proof. The general rules of evidence, however, apply. Testimony of witnesses who actually saw the writing done would be the best evidence, no doubt; but, while in some jurisdictions it has been held that this is the only way of identifying specimens to be used as standards, in others it has been held that other evidence may be sufficient for the purpose, as, for instance, the delivery in due course of business of a receipt or other paper purporting to bear the signature of the party. An elastic rule such as the latter, taking into consideration the facts of each case, would seem to be better than an absolute requirement that the evidence to be sufficient must be of persons having actually seen the writing done.

E. L.

General Basis for a Valid Expert Opinion Concerning Questioned Writings.—A valid judgment of the authorship of any questioned writing may be well grounded upon the following axioms: everyone who has practiced writing long enough to do it automatically, having the mind intent upon the subject-matter and not at all upon the writing itself, has inevitably acquired certain writing habits. Some of these habits are common with many other writers. Some few are uncommon, and, perchance, some particular habit may even be peculiar to the single individual. Many of the habits are voluntary and conscious ones. These are subject to more or less control at will. But there are some other habits which are wholly involuntary, and quite unconscious. These, therefore, are not subject to any modification at will. They can only be gradually changed through the formation of other new habits which displace the former habits.

Careful analysis of a sufficiently large number of samples of unquestionably genuine automatic writing of any person will disclose the several classes of habits manifested by that writer. Likewise, what may appear to be the habits in any piece of questionable writing, upon a comparison of the two sets of habits, those which are alike as well as those which are different may readily be seen. If there is found to be a persistent agreement, on the one hand, in the absence of such habits, particularly as are common to many other writers, and, on the other hand, in the presence of like habits, especially of such as are involuntary and unconscious, and these, too, in such numbers and sequence of combination as could by no reasonable chance be due to merely accidental coincidence, then there is from such cumulative evidence no other conclusion to be drawn by an expert except the opinion that, beyond any reasonable doubt, the two sets of writing must be due to one and the same cause, that is, by the very same writer.

In forming an opinion, it should not, of course, be overlooked that single points of likeness and unlikeness may be of vastly different relative value. Any writing, to be at all readable, must have very many points of similarity to the conventional model type. Likewise, that no sample of genuine open handwriting of any person is ever an exact facsimile in all respects of any other sample. They may appear to be as much alike as two peas grown in the one pod, but careful examination can always differentiate between them, however much alike they may appear upon casual observation.

One seeking to disguise or hide his identity, as a writer naturally attempts to, does so by such changes of voluntary conscious habits as will change the general appearance of his writing. He changes his kind of pen and his manner of

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holding it. He changes his usual form of letters, especially the capitals, and also their slant. All the little details of his involuntary unconscious habits of necessity remain as usual. Likewise, the one who seeks to assume the disguise of another, as in forging a writing, naturally attempts to affect, so far as may be, the general appearance characteristic of the other. He hopes to pass muster, therefore, without exciting suspicion, well knowing that if an inquiry is once instituted the falsity is likely to be revealed. To be able to do his best with his writing instrument he must hold it in his accustomed way, which may be quite different from that of the genuine writer. To get the correct forms of letters, he may copy them in some mechanical way, make a freehand drawing of them or practice a running-hand copying until he has more or less acquired the new habit of similar formation of the letter. His old unconscious habits of pen movements in the production of the new forms still persist, however. He has not attempted to change these. They are unknown to the common forger, his own as well as those of the original. He aims at general pictorial effect; these unobtrusive details do not enter into that.

DR. BENNETT F. DAVENPORT, Boston.

The Juvenile Court at Geneva.—Alfred Gautier, in *Schweizerische Zeitschrift für Strafrecht*, 24th year, No. 2.

To quote Professor Gautier, "this is the problem of the day." Not only in Switzerland, but all over Europe, the Juvenile Court, conditional liberation, suspended sentence, probation and reformatory institutions are spreading with great rapidity and force. M. Gautier expresses his admiration of the system as a whole and recounts the incidents of his twelve years' struggle to bring about some such reform.

A brief summary of the history of legislative action in regard to such measures is given with a criticism of the project then in the hands of a commission (1911).

The bulk of the article consists of a comparison and criticism of the proposed Swiss code, the Genevan code and a plan presented by the Women's Union—an organization of social workers in Geneva.

The writer pleads for a special judge for the children's court with no other functions to perform; but confesses despair of securing such an official. The legislators cannot bring themselves to break with the ancient court composed of a judge and two "juror judges" who sit, one on either side of the judge with advisory powers only. A judge similar to our own Juvenile Court judge is suggested to take the place of the "double tribunal," and the abandonment of an attorney and pleading at children's trials is advocated. The Swiss bar balks at the idea of combining the office of investigator, judge and "condannator" in one person.

The adoption of the following well-known practices is urged upon the commission having the Swiss code in charge: Judicial discretion to release on probation; judicial surveillance through the medium of a probation officer; mature probation officers, at least 35 years old; female probation officers; resort to an institution of correction as a last resort only, after probation has failed signally; exclusion from the trial of all persons not directly interested in the proceedings; making discussion or comment on the case in public on the part of those present at the hearing a misdemeanor; the suppression of the publication

PLEA OF GUILTY AFTER INDICTMENT

of the names and addresses of the delinquents and the details of the cases in the newspapers.

The foregoing propositions place the professor in the ranks of the modernists and win for him the sympathy of the American progressives whom he so much admires. The professor's difficulty is not very unlike our own, namely, a rigidly conservative bar backed by conservative or indifferent public sentiment.

PHILIP A. PARSONS, Syracuse University.

Plea of Guilty After Indictment.—The following is a letter under date of September 19, 1912, which is being sent to the various Bar Associations of the State of New York:

"Gentlemen:—At the Annual Conference of Magistrates of the State of New York, held at Albany, on the 9th day of December, 1911, Mr. George McLaughlin, Secretary of the State Commission of Prisons, called the attention of the meeting to what he stated was the universal practice in this state, "when a prisoner is charged with a felony or a serious misdemeanor, he cannot plead guilty until after indictment.

"The case is best presented in his own quoted remarks. 'While this is true, should it be true, isn't it our duty to ask ourselves the question,—Is this a wise provision of law? When a man is charged with a crime and has had his examination, then if he desires to plead guilty at once, instead of languishing in jail in some counties from six to eight months before the grand jury meets to take up his case and before he can plead, he should be allowed to plead and receive his sentence at once. Why should not the law provide that, at the prisoner's election, he being a man of sufficient maturity to know his own mind and to be governed by his own judgment, he should be permitted to plead guilty and receive what penalty the law is ready to inflict on him, rather than keep him housed up in jail, where he is receiving no benefit, and is maintained in idleness at the expense of the taxpayers for months, waiting for his case to come before the grand jury? I think it would be wise to have this law changed, so as to permit the district attorney to bring him at once before the county judge or other tribunal having jurisdiction to sentence him.'

"The matter was fully discussed and a committee was appointed to investigate the subject and call it to the attention of the several Bar Associations of the State, with the view to securing, if possible, suitable legislation to remedy such evils as might exist. The Committee communicated with justices, magistrates, district attorneys and other officers in the several counties, with the result that it has been found that many cases of the character described occur each year. It appears that in 1911, 6,657 convictions were had, and of this number 1,193 were after trial, while 5,452 pleas of guilty were received. In some of our counties the grand jury meets but twice a year, early in the spring and late in the fall, an interim of sometimes eight months intervening. The prisoner, therefore, who is held to await the action of the grand jury in such a county, if he is willing to plead guilty and cannot get bail, must be held without action for a long period, when, as a matter of fact, his case could be disposed of were he taken before the county court and sentence be imposed at once.

"The hardship is most marked where, on a plea of guilty, it is discovered by the court that a small sentence, or even a suspended sentence, would meet

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the necessities of the law, and instead of this remedy being applied shortly after the commission of the crime, no action is taken for several months, although the prisoner has been willing and anxious to plead guilty and receive such punishment as the state, in its wisdom, might inflict.

"The committee have carefully examined the statutes and decisions of the state, in the hope of being able to suggest a remedy by legislation, but has been met with the constitutional provision (Sect. 6, Art. 1, N. Y. St. Cons.) that 'no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment by a grand jury.'

"The practical difficulty in reaching a solution is that all crimes of the grade of felony must be prosecuted by indictment, and no indictment can be found except by a grand jury. In some states there are few felonies, even serious crimes being prosecuted on filing of an information, but in this state it is otherwise.

"In accordance with the resolution of the State Conference, may we call your attention to this matter, at the same time soliciting your interest and such suggestions as may present themselves, looking to the solution of this, at times, most serious problem?"

(Signed) ROBERT J. WILKIN, (chairman) Justice of Court of Special Sessions of New York;

JOHN B. M. STEPHENS, County Judge of Monroe County;

JOHN J. BRAIDY, Police Justice of Albany;

OTTO KEMPNER, Chief City Magistrate of Second Division Board of City Magistrates, New York.

Grounds of Disbarment.—*The Yale Law Journal*, Vol. XXI, No. 8, at page 680 (June, 1912) contains an interesting and timely comment on the recent Michigan decision, *In re Radford*, 134 N. W. 73. It was there held that the power of the courts to disbar an attorney at law is not confined merely to cases in which the attorney has been convicted of crime or of misconduct in a professional capacity, but may be exercised in cases of misbehavior, though not in the strict capacity of an attorney, which demonstrate his character to be such as to unfit him to be entrusted with the office and functions of the lawyer. The editors of the magazine, approving the decision, promptly remark that in disbarment proceedings "the gist of the action is his (the attorney's) unfitness to manage the legal business of others." It is obvious that the existence of such unfitness may be conclusively established by conduct on the attorney's part in no manner related to, or connected with, the practice, as such, of his profession.

All efforts toward legal reform will prove nugatory until the standard of the bar is raised, and raised most materially. No more effective means of raising this standard can be devised or suggested than the maintenance of a strict and close supervision over the conduct of members of the bar. This can be done, and done effectually, by lawyers themselves through the medium of local and state bar associations. In numerous centres, e. g. New York City, strenuous and, upon the whole, successful and enlightened efforts to that end are now being made. Only by a patient continuance and steady extension of such regulation and scrutiny can even a modicum of relief be obtained.

I. MAURICE WORMSER. University of Illinois.

AID OF DISCHARGED PRISONERS

PENOLOGY.

The Aid of Discharged Prisoners in Germany.—According to an article by Dr. H. Seyfarth in "*Blätter für Gefängniskunde*," Vol. 46, No. 3, there are at the present time in Germany about 600 local societies concerned with the welfare of discharged prisoners. It is not the purpose to call attention to the general work of these organizations, but rather to the efforts made for the care of discharged prisoners who come from the higher walks of society. Dr. Seyfarth points out how exceedingly difficult this problem is and justly remarks that for the class of men in question, the severest penalty begins when the prison gates are opened and they are about to seek a new foothold.

To meet the situation there has existed for ten years in Germany a society with the special purpose of aiding prisoners coming from "the educated classes." Long experience has shown that it is almost impossible to accomplish the object within the boundaries of Germany, and therefore the chief effort of the society has been to secure the immigration of suitable discharged prisoners to foreign countries.

Dr. Seyfarth emphasizes that his society has nothing in common with the methods of earlier years of shipping anti-social elements to other countries merely to get rid of them. On the contrary, the ex-prisoners whom the German society endeavors to place are carefully selected persons who "as a rule could render valuable service in Germany if the prejudices of society on account of their past did not everywhere block their way." In short, only those are helped to a foothold in foreign countries who give every assurance not only of having sufficient ability, but of having enough moral strength and energy to do well.

Before being sent away these ex-prisoners must undergo a period of probation lasting several months at the home station. During this time they are given opportunity to prepare themselves in different ways as seem necessary. Instruction is provided in English, Spanish and Portuguese. Those who wish to secure business positions may take courses in bookkeeping, stenography, typewriting, etc. For persons of other callings everything is done in order that the knowledge that they have acquired may be useful to them under the new conditions. During the time of probation the confidential agents of the society in foreign countries are informed and everything is done to prepare for the reception of new arrivals who at once are placed under appropriate guidance and care. In this way the German society in the course of ten years has been able to place 193 discharged prisoners in good positions, some of whom have become very important members of the German colonies abroad. Among these were former lawyers, doctors of medicine, philologists, theologians, business men, engineers, army officers, teachers, etc. The wards of this society are to be found in all parts of the world. Some of them have been placed in Europe, but it is chiefly in the South American states that the best chances are found for this class.

In order to extend as well as safeguard its work, the society now plans to establish temporary homes *Uebergangs Stationen*, patterned after the one at Hamburg, in the countries to which most of the wards are sent. Steps have already been taken to form branch stations in Brazil and Chile, while another is contemplated for the Argentine Republic.

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Both as to extent and methods, we are far behind Germany in our work for discharged prisoners. Measured by what ought to be done, our efforts are wholly insignificant and too often of the perfunctory variety. The German intensive system is nearly everywhere lacking. JOHN KOREN, Boston.

The Cat as a Deterrent for Crime.—The New York *Sun* publishes an able article on this interesting topic. It is a noteworthy reply to such thinkers as Mr. Beverly Robinson who can't understand the old fashioned idea of the Bible as applied to the rod in the family which has been for our century and the last as orthodox a study, as the Westminster confession of faith, the thirty-nine articles or any of the conservative dogmas.

Whipping as a Deterrent.

Dr. Beverly Robinson, who for many years has been deeply interested in penal reform, can apparently find no justification whatever for flogging under any conceivable circumstances. In a recent letter to *The Evening Sun* he stated some of his objections to this method of discipline as follows:

"It brutalizes both prisoners and keepers. It is revolting to our senses. It is barbarous, unfeeling and worthless. * * * When one knows prisons and prisoners and has done what is possible to ameliorate conditions, it is sickening to hear or read any statement or report which would help return to methods of repression which were a disgrace to those who dared inflict them. * * * Flogging to a prisoner is an infamy without excuse or palliation."

It will probably grieve Dr. Robinson to learn that in the Criminal Law Amendment bill lately introduced into the British House of Commons a flogging clause was adopted by a huge majority. The bill is directed against the so-called white slave traffic, and one clause provides that a male procurer may at the discretion of the court be whipped as well as imprisoned for a second or subsequent offense. An amendment making the clause applicable to first offenders was likewise carried but by a very narrow majority.

The usual arguments against corporal punishment were advanced by several speakers. One of them said it demoralizes not only the criminal but the judge who awarded it, the officer who carried it out and the community that tolerates it. He doubted if it has any deterrent effect, but if it has, he argued, why not give it general application? These and similar arguments were used by several speakers, but they did not go down with the majority. One tried to appeal to the sensibilities of his hearers and wondered "how many members of the House would take the cat in their hands." He got a prompt answer from two of them, one a Conservative, the other a Laborite, for the debate was carried on without a trace of party feeling. Mr. Crooks said they might send for him if ever they were short of a flogger, for in such cases he would do the work without the least sense of personal degradation. The argument that there was some danger of degrading such vermin by whipping them did not appeal to many, and when the House divided 297 voted for the clause and 44 against it.

The opinion of the police, not only at home but in Australia and South Africa, too, undoubtedly influenced the voters, for it is admitted by those who are best able to judge that imprisonment has but a slight deterrent effect on these wretches. On the other side, as one observer puts it, "by a happy provision of nature the skin appears actually to become more sensitive as the moral sense becomes atrophied."

THE CAT AS A DETERRENT FOR CRIME

The debate in the English Commons shows the exact state of the public mind in England on the utility and substantial value of flogging, not as a punishment, but as a deterrent. The public opinion is apparently against flogging as a penalty for crime. We have abolished it in the navy, and so has England, but there with reluctance. It has not been abolished in the home in the best regulated families, nor by law in the schools of the nation, but public opinion against it is now quite pronounced in New York and in some of the states. In our boyhood no one, not one in a hundred, would have thought of conducting the common school without a birch stick. I think no boy of that period ever felt any such feeling or sense of degradation as Beverly Robinson entertains back of the sentimental view of punishment. It has always seemed to me to be a marvelous force as a deterrent against the commission of crime. Why has Delaware retained her whipping post? Why do her best judges and her ablest jurists, and other men cling to it? It is because it is one of the most formidable forces at command as a *deterrent*. It absolutely abolished crime in Delaware.

Governor Briggs of Delaware told me that in his long life he had never seen a white man come back to the whipping post. It is an unanswerable argument. They have no state prison in Delaware. The professional criminal after his first conviction moves out of the state. The professional criminals, burglars, and others gave Delaware a wide berth.

Crimes of violence that are accompanied by brute force like wife beating, for example, can be exterminated and eliminated only by the whip. A jail has not the slightest possible deterrent effect upon a wife beater, and as a penalty for the offense is a farce and a disgrace to our intelligence. That judge who came down from the bench and beat with his fists the criminal who had so brutally beat the mother of the children of the brute who beat her was on the only line of successful resistance to crimes of violence and force that reaches the wife beater. Give me a Delaware whipping post in New York City, and I will eliminate wife beating in that city or in any other American city.

The Medico Legal Society once led a campaign against the wife beater by proposing the cat for him alone. For one blow he gave the mother of his children we wanted to give him five cuts of the whip on the bare back that drew the blood. The Hon. Simeon E. Baldwin, then a Supreme Court judge in Connecticut, came down and sat by my side and spoke strongly urging it. Chief Justice Gore and Associate Justice Grubb of Delaware came also and sat by my side and supported it by their experience in Delaware, and their testimony as to the deterrent value of the cat on crime of all kinds. Theodore Roosevelt, while president, strongly praised and urged it, in the District of Columbia for Washington, but as it was for the whole congress of all the states the Beverly Robinsons of that day successfully opposed it. The great army of wives who are bound and beaten make no public outcry. Not one woman in fifty enters any complaint in court against the father of their children. Their sighs are secret, their tears unseen, but they are a river, a current like the Amazon through the great ocean of womanhood. Their moans are a continual refrain of uncontrollable anguish. It is a higher humanity, a broader and deeper movement for the benefit of womankind to inquire how best to meet, stem, and master this flood of misery that American women have borne, endured, and suffered, while not a finger or a hand is lifted for their deliverance. Female suf-

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frage, even, does not oppose the flood. Believing as I do in the efficiency of the cat as an absolutely positive deterrent against this one crime and shame of wife beating, I shall hail and welcome the hour when we may in our country elevate the cat as an instrument and symbol of humanity and mercy, to universal womanhood in every American state. Wife beating as a crime does not exist in Delaware. Every police magistrate knows to what extent it exists in New York City. The sobs, the moans, the tears of the wretched victims who are still drinking of this bitter, terrible cup are ignored. They are the voices of a woe that exceeds a thousandfold the sentimentalities of a wilderness of all the Beverly Robinsons and mock humanitarians of our age.

The superintendent of prisons opposes the cat! Of course the cat should not be allowed for one moment in prisons for the correction of inmates. It is not a question of the management of prisons or the inmates of institutions. It is the higher question of what shall be the punishment or penalty for crime itself. It is how we can diminish the volume of crime. Is the cat a deterrent? There is no room for any question of sentimentalism or for plea of degradation of the youth. Ten blows of a cat on the bare back of a criminal for crimes of violence, is worth sixty days' sentence. The brute side of the criminal feels and cringes at the cat. It is force against force. He will not face it the second time.

Why throw away with a sneer, the simple and best weapon that saves the boy? The English magistrate, who finds the boy has gone wrong, saves him from the degradation, not only of a commitment to prison, but from that contact with criminals that confinement in a prison entails.

Where is the father who is unable to restrain his wayward son, from 11 to 15 years of age, who has been guilty of petty offense who would not rather have his son whipped even on the bare back and done with, the boy arrested, in his downward path, and nine times out of ten cured, than to have the stain on his own, and the family name, that one hour's commitment to even a common jail and its awful consequences inflicts on a human life? If I had a boy who was going wrong by contact with vicious companions and bad surroundings in schools, which every boy has to meet, I would a thousand times prefer to have him flogged by the master, or even by order of the magistrate as is done sometimes in mercy by the father himself under the eye of the court in England. One such experiment in the life of the erring boy, may be his salvation, while the key of the jail turned on him is often the first fatal step in his path to ruin.

CLARK BELL, New York City.

Editor of *Medico-Legal Journal*. (Reprinted from the December issue of the *Medico-Legal Journal*).

American Penology Through German Eyes.—In the *Vierteljahrsschrift für gerichtliche Medizin und öffentliches Sanitätswesen*, vol. 3, No. 43 (Berlin) Dr. Hugo Marx tells of the impressions of the United States gained by a prison physician traveling in America. He is on the whole sufficiently complimentary. The use of probation, in the case of first offenders, he recommends without reserve and shows friendliness toward the indeterminate sentence. Our reformatory system appealed to him especially. He contrasts it most favorably with German methods which, in his opinion, have the effect of depriving prisoners of mental self-reliance instead of helping them to it. But he admits—and

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this is of particular importance to us—that owing to lack of competent evidence nothing absolutely certain can be said about the results of the reformatory system, probation, the indeterminate sentence and parole. It is a polite way of intimating that we lack proper records and statistics. On account of this relative uncertainty Dr. Marx does not advocate the adoption of American methods without further inquiry, but recommends that one or more reformatories of the American pattern be established experimentally. He would have also an institution for juvenile delinquents like the one at Industry, N. Y.

George Stammer of Berlin has published some notes on American penology in vol. 47 of the *Archiv für Kriminalanthropologie und Kriminalistik*, Leipzig. His presentation of the principles of our penology is in the main correct; but his description of our methods is less discriminating. He rehearses them one by one with little comment. Our way of dealing with habitual criminals evidently displeases the author. One wonders what particular piece of state legislation he has in mind. Evidently the great difference in methods and practice between the states has not been fully understood. Our police system he finds defective, but where did he learn that there are 118 unpunished murderers in the United States to each million of population as against five in Germany? The author closes with a rather touching reference to our prison Sunday which he seems to regard as being observed in every church of the land, and which he takes as one indication of the general and deep concern of our people for questions of penology. If it were true!

JOHN KOREN, Boston.

A State Industrial Farm for California.—Recently the writer has put in the hands of Governor Hiram W. Johnson a plan for a State industrial farm which will be brought before the next regular session of the state legislature. The bill calls for five thousand acres of land where farming, stock raising, gardening, lumbering, orcharding, quarrying and other wholesome outdoor occupations can be engaged in. This has been in the writer's mind for 20 years, but until lately he could get no hearing as the plan was declared impractical. Of late, however, state officials, jurists, prison officials, and other prominent citizens have been persuaded to see its feasibility.

It is intended to help the prisoners mentally, morally, physically, and financially before he is discharged from his term, rather than trust to charity to help him after his discharge when he has been debilitated mentally, morally, and physically during a term of confinement in the factories of the prison. The plan is to have honor men from both prisons of the state to construct the buildings and improve the land under proper supervision, and the plan further on to be operated under the indeterminate sentence and parole plan.

W. I. DAY, East Oakland, Cal.

School of Letters in the Huntingdon, Pa., Reformatory.—Among the penal institutions of America there is none more important than a reformatory, an institution for the detention and reformation of juvenile offenders who have committed the first offense against the laws of the state. Great care must be exercised in dealing with this class of law-breakers, whose ages range from 15 to 25 years. Our first aim, which we desire always to carry to successful completion, is entire thoroughness. In this we are handicapped to an extent surpassing that of schools whose environments are more satisfactory than ours. Many of the influences which prove derogatory to progress are of such a nature

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that, in the course of events, can only be endured. In this list we may include past training of a nature entirely wrong. This must be broken up. In some cases we find deficient mental caliber. Others whose faculties are only alert on certain subjects, and semidormant on others. All these traits must be properly adjusted before the mental machinery can be made to run without friction. The accomplishment of this requires some tact and much time.

The effort is put forth in our schools to do all for the pupil possible. In this he will require that the "How" and "What" must follow. The second general aim in our schools is to teach only the intensely practical. The time spent in teaching technicalities would be more than lost. The aim is and should be to teach that which will prove of some practical utility in the future outside life of the learner. Mathematics (arithmetic) is one of the principal studies in our curriculum. This followed by efficient training in orthography, keeping accounts, or elementary bookkeeping, and with continued practice in penmanship, goes to make up the practical bread-earning part of our school training.

While this work is in progress the literary element is not neglected. Thorough instruction is given in language to the different classes where the grade permits. The discussion of literary and scientific subjects are freely indulged. The young man going out from our schools, if he has been at all industrious, and desirous of knowing, is able to converse intelligently on all subjects, either religious, economic, historical or political. We confidently believe if the persons with whom our pupils come in contact after going beyond the confines of our schools would treat them with true philanthropy, they will prove that the lessons relevant to good government and discipline have had the desired effect. As long as the maxim prevails, "Once a criminal, always a criminal," will our schools fail in reaching that high state of perfection, looking to the lasting reformation of those placed under our care. If proper guardianship or parental care were exercised after their term of incarceration has expired, the effect of our teaching would have ample time to materialize, and better results could be expected.

The root of evil with the majority of the young men brought to the reformatory is that some time in their lives they have been neglected; they were left to themselves. Few people who are thus left will make any decided progress, or do anything to the advantage of anybody. They have idled away their time on our streets, lanes, alleys and wharves of our cities, and learned to swear, steal and lie. A dollar spent in gathering them into homes and caring for them in youth would be worth more than many dollars in punishing them after they have grown old and hardened in their crimes. Prevention is more economical and safer than repression.

J. H. LICKENS, School Superintendent, Huntingdon, Pa., Reformatory.

Test of the Efficiency of the Probation System in Buffalo.—At the June Criminal term of the Supreme Court for Erie County, New York State made an interesting test of the efficacy of the probation system.

On May 23rd, about ten o'clock in the evening, two boys, K. and V. had taken an automobile, valued at \$3500, which had been left standing in front of a downtown hotel, and, accompanied by two girls, had gone joy riding. While traveling at a high rate of speed just outside the city of Buffalo, the machine skidded on a sharp curve, turned turtle, and fell into a ditch, resulting in damage of about \$600 to the machine.

POLICE POLICY IN CLEVELAND

The boys were arrested several days later and charged with grand larceny in the second degree, under the statute of New York. They pleaded guilty and were brought before Justice Charles A. Pooley for sentence.

Both boys were eighteen years of age, came from very respectable families, and had no previous criminal records, although one admitted that he had taken four other cars for joy rides within the last three months.

The complainant was the Michigan Commercial Insurance Company, which had insured the owner of the automobile. The President of the Automobile Club of Buffalo joined with the Insurance Company's representative in requesting the court to make an example of these boys owing to the large number of like offenses which have occurred recently in this locality.

Justice Pooley, after severely reprimanding the boys, suspended sentence upon them, placing them on probation for a year on the condition that they report regularly to the Probation officer, that each get some regular employment, and that they repay the Insurance Company from their own earnings and not from family contributions, for the damage done to the machine.

The efficient probation office at Buffalo has provided positions for both boys, enabling them to begin payment, and they are now making reparation out of their own earnings for the loss which they caused.

It is clear in this way that the boys are being saved by hard work, the wrong done is being really righted, and the state is not being put to prison expenses to subject these boys to criminal associations.

ADELBERT MOOT, Buffalo.

POLICE—IDENTIFICATION.

The Golden Rule Police Policy in Cleveland, Ohio.—The following is a copy of the daily bulletin of February 1, 1912, issued by Chief of Police Fred Kohler to the Police Department of Cleveland, Ohio:

UNDER THE OLD CUSTOM OF MAKING ARRESTS.

Arrests for the year 1906.....	31,736
Arrests for the year 1907.....	30,418

UNDER THE COMMON SENSE OR GOLDEN RULE POLICY.

Arrests for the year 1908.....	10,085
Arrests for the year 1909.....	6,018
Arrests for the year 1910.....	7,185
Arrests for the year 1911.....	9,516

DISPOSITION OF CASES AFTER ARREST IS MADE.

	1908	1909	1910	1911
Total number of arrests made.....	10,085	6,018	7,185	9,516
Intoxicated persons released on waivers.....	2,512	331	33	8
Turned over to other authorities.....	470	180	212	240
Bound over	653	547	510	692
Sent to the workhouse.....	1,124	1,030	1,365	1,459
Fined (money)	911	950	1,162	1,444
Cases continued	260	139	139	124
Persons arrested, disgraced and then allowed to go free	4,155	2,841	3,763	5,549

A POLICEWOMAN FOR STRASBURG

Take note of the 5,549 persons allowed to go free out of a total number of 9,516 arrests in the year 1911. No doubt the imprisonment and disgrace was a most severe penalty for them, but what has society gained?

There is no reason why persons should be placed in prison for minor violations only to be disgraced and then go free. It weakens their regard and respect for the law.

If you but appreciate the effect upon the moral character after incarceration in prison, you will readily agree. If the Common Sense Inquisition had been made by the proper officers in the majority of the cases, the matter could have been adjusted without arrest with better results.

In every matter that comes before you be sure to make every possible inquiry so as not to place any person in prison unless the officer in charge is satisfied that you have the necessary evidence to convict, or in felony cases, to detain.

I want to reduce useless arrests to a minimum this year, and insist that the Common Sense or so-called Golden Rule Policy is to be our watchword to achieve this result.

See table below for January, 1912.

DISPOSITION OF ARRESTS BY POLICE WITHOUT WARRANTS.

	1908	1909	1910	1911	1912
Total number of arrests for January.....	911	591	401	635	529
Intoxicated persons released on waivers.....	274	129	3	0	2
Turned over to other authorities.....	56	25	10	25	20
Bound over	56	45	31	59	45
Sent to the workhouse.....	72	46	56	73	69
Fined (money)	34	66	48	75	32
Cases continued	176	118	100	139	28
Persons arrested, disgraced and then allowed to go free	243	162	153	264	69

DISPOSITION OF ARRESTS WITH WARRANTS.

	1908	1909	1910	1911	1912
Total number of arrests for January.....	911	591	401	635	529
Intoxicated persons released on waivers.....	274	129	3	0	0
Turned over to other authorities.....	56	25	10	25	5
Bound over	56	45	31	59	11
Sent to the workhouse.....	72	46	56	73	51
Fined (money)	34	66	48	75	24
Cases continued	176	118	100	139	55
Persons arrested, disgraced and then allowed to go free	243	162	153	264	118

R. H. G.

A Policewoman for Strasburg.—The magazine, *Seeking and Saving*, published by the Reformatory and Refuge Union of London, publishes the following note concerning the first policewoman in Germany:

"The Berlin correspondent of the *Standard* gives the following particulars of the duties of what we believe to be the first policewoman in Europe. Strasburg is to have the honor of initiating this service; her salary is to come from

FINGER PRINTS AND HEART PULSATIONS

the funds of a private association—the Local Committee of Public Morals—and partly from the State Exchequer. The duties of this woman assistant of the police force concern the supervision of women thieves and unfortunates; but this is a mere beginning. She is to have a special office where she may receive reports on the irregular morals of servant girls and shop assistants, whom she is then to visit in order to convey words of warning, as well as sympathetic counsel to the weaker victims of temptation. By the co-operation of the Public Morals Committee she is also empowered to find suitable employment for these women.'

"Another of her duties will be the interrogation of first offenders who, by the provisions of a special decree, will not be led before the police court. She may also be called upon by the mothers of headstrong girls to report on their doings. But police work in the strict sense of the term is not the greater part of her duties. Provided with a fund of a few hundred pounds, the new assistant is to be something of a police court missionary, something of a guardian angel to all the women who come within her ken as being out of harmony with the law.'

"She is to be empowered to handle the earnings of all the younger women who come under her supervision, and she is advised to place one-third in the savings bank, to give one-third to the parents, and to leave the remaining third with her protegee. Her signature will also obtain for her protegees clothing and other articles at cost price. Furthermore, she will have the control of the girls' hostels.'

"The post is not to come into being until October 1st, and the city authorities are now anxiously advertising for someone to fill it. The particulars show that the appointment is to be given a trial for one year before being made a permanency. It is significant that the advertisements make a direct appeal to the supporters of the suffrage movement. Here, it says, in effect, is an opportunity for the suffragists to come forward to do real work; and successful accomplishment here, through the support of the movement, it adds, would do much to remove opposition to their aims and endeavors.'" A. W. T.

Mr. McCaffrey to Study Police Organization.—It will be of interest to those who are concerned in the organization of police systems to know that Mr. George H. McCaffrey, a graduate student in Harvard University, has recently been appointed Sheldon Fellow to enable him to study police systems abroad in London, other foreign cities and in America. Mr. McCaffrey will be remembered as the author of the excellent article on The Boston Police, which appeared exclusively in this JOURNAL, Vol. II at page 672. R. H. G.

Finger Prints and Heart Pulsations.—*Law Notes* recently contained the following:

"The Supreme Court of Illinois in the recent case of *People v. Jennings*, 96 N. E. Rep. 1077, had occasion to pass upon the admissibility in evidence of photographs of finger prints and of the testimony of experts as to the identity of two sets of finger prints. The accused in that case was convicted of murder in the first degree, and the expert evidence figured largely in the case. The Supreme Court, in holding that such evidence was admissible, said: 'It is earnestly insisted that this class of testimony is not admissible under the common-law rules of evidence, and as there is no statute in this State

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authorizing it the court should have refused to permit its introduction. No case in which this question has been raised has been cited in the briefs, and we find no statutes or decisions touching the point in this country. This class of evidence is admitted in Great Britain. In 1909 the Court of Criminal Appeals held that finger prints might be received in evidence, and refused to interfere with a conviction below though this evidence was the sole ground of identification. *In re Castleton's Case*, 3 Crim. App. 74. While the courts of this country do not appear to have had occasion to pass on the question, standard authorities on scientific subjects discuss the use of finger prints as a system of identification, concluding that experience has shown it to be reliable. Ten Ency. Britannica (11th ed.) 376; 5 Nelson's Ency. 28. See also Gross' Crim. Investigation (Adams' Trans.) 277; Fuld's Police Administration, 342; Osborn's Questioned Documents, 279. These authorities state that this system of identification is of every ancient origin, having been used in Egypt when the impression of the monarch's thumb was used as his sign manual, that it has been used in the courts of India for many years and more recently in the courts of several European countries; that in recent years its use has become very general by the police departments of the large cities of this country and Europe; that the great success of the system in England, where it has been used since 1891 in thousands of cases without error, caused the sending of an investigating commission from the United States, on whose favorable report a bureau was established by the United States government in the war and other departments. . . . We are disposed to hold from the evidence of the four witnesses who testified, and from writings we have referred to on this subject, that there is a scientific basis for the system of finger print identification, and that the courts are justified in admitting this class of evidence; that this method of identification is in such general and common use that the courts cannot refuse to take judicial cognizance of it.' The court also held that it was not error to permit the finger print experts to testify positively that the finger prints discovered at the scene of the crime were made by the same person as the finger prints obtained of the accused after his arrest. In so holding the court said: 'While it is usual for expert witnesses to testify that they believe or think, or in their best judgment, that such and such a thing is true, no rule of law prevents them from testifying positively on such subjects. It is for the jury to determine the weight to be given to their testimony.'

"While the Illinois case above cited appears to be one of first impression in an appellate court upon the admissibility of finger print evidence, such evidence has been received in numerous recent trials, among which might be mentioned a murder trial in New York in which that class of evidence was mainly relied upon in securing the conviction which followed. Finger print evidence presents many features which seem to place it above the other classes of expert evidence. One of the most striking differentiating features is the fact that, from the data now obtainable, it is possible for a finger print expert to state positively as to the identity of finger prints. It is believed that in all of the cases in which such evidence has so far been made use of, in no instance has there been that conflict of opinion between the experts which is a disgusting feature of the testimony of the so-called 'alienists.' Should this record continue, it is easy to foresee the weight which will be attached to such evidence by juries."

FINGERPRINTS AS EVIDENCE

As scientific knowledge increases and is made more exact, new methods of identification and proof are developed. The court in the Jennings case stated that it was at one time seriously questioned whether a photograph could properly be introduced in evidence. In *Boyne City, etc., R. R. Co. v. Anderson* (146 Mich. 328), decided in 1906, the court permitted the operation of a phonograph before the jury to reproduce the sound made by certain railroad trains. Communications through the telephone have been held admissible. In a recent sensational investigation evidence of a conversation heard through the medium of the dictagraph was received. Professor Wignore, in his book on Evidence, says the test in such cases is whether "the instrument or process is known to be a trustworthy one." Since it has been scientifically established that the papillary lines of the finger tips are different in each person and that they remain unchanged from birth to the decomposition of the body, and since impressions made by the finger tips may be photographically preserved, it would seem that the method of identification by such impressions was sufficiently trustworthy to allow the impressions to be received in evidence. The same degree of trustworthiness cannot be claimed for the process described in the following comment in the March issue of *Law Notes*:

"From California comes the report of what is claimed to be the first demonstration in a court of justice of the Münsterberg theory of criminal detection by heart pulsations. The report states that the defendant in a criminal prosecution consented to become the subject of the test, and his normal pulse was found to be 79. The pulse increased to 91 when he gave his name as 'James Smithers' and to 95 when informed by the judge that he was not telling the truth, which he admitted. In this instance of course the test worked to perfection. But suppose the defendant had been a timid female. When asked a simple question experience teaches us that she would have become at once confused, and in all probability the increase of heart pulsation upon making a truthful answer would have been at the same rate as the increase in the California case. What benefit in such a case would the increase in pulsation have supplied? Of course if an increase in pulsation is to be given weight as impeaching evidence a normal pulse must be considered as corroborating evidence, and if the defendant in the California case had 'liquored up' before the trial the heart pulsation might not have increased, and might it not then have been said that the evidence of the defendant, corroborated by the liquor, should prevail over the evidence of two witnesses for the prosecution?"

EDWIN R. KEEDY, Chicago.

Fingerprints as Evidence in a Victorian Case. "The value of fingerprint evidence as a means of identifying a person charged with a criminal offence is to be argued before the State Full Court shortly on a case to be stated by Judge Johnston, sitting as chairman of the General Sessions. On Wednesday last Edward Parker was convicted before his Honor on a charge of stealing from a warehouse, mainly on the evidence of fingerprints found on a ginger-beer bottle on the premises. Application was made today by Mr. Bryant, instructed by Mr. Sonenberg, for a case to be stated to the Full Court to determine whether the evidence in the case was sufficient to warrant a conviction.

EXAMINATION FOR WARDEN

"Mr. Bryant said the value of fingerprint evidence might be very great, but, on the other hand, might be entirely fallacious. In the interests of the community it was desirable that there should be some definite ruling on its value. In this case there was nothing to show that the accused had been in the vicinity of the warehouse. None of the stolen jewelry was found on him, nor was he found associated with any person in possession of any of the jewelry. The ginger-beer bottle might have been put in the warehouse by somebody else.

"Mr. Woinarski, K. C., the Crown Prosecutor, quoted an English case to show that fingerprint evidence was enough if it satisfied the jury. In that particular case the fingerprints were on a candle. It was the only evidence of identification, and the jury convicted the accused. The court refused a new trial, holding that it was a matter for the jury.

"Judge Johnson said as this was a matter of great public importance it would be advisable to have an authoritative opinion on the subject, and he would state a case for the Full Court as requested.

"Mr. Woinarski asked that the accused should be kept in custody in the meantime and his Honor said he would not allow him to be at liberty."—From the *Australian Advertiser*, March 15, 1912.

BENJAMIN JUDKINS, San Diego, Cal.

REVIEWS AND CRITICISMS

DIE URSACHEN DER JUGENDLICHEN VERWAHRLOSUNG UND KRIMINALITAET, STUDIEN ZUR FRAGE: MILIEU ODER ANLAGE. By *Hans W. Gruhle*. Julius Springer, Berlin, 1912. Pp. XIV + 454, with 23 figures and colored table. *Abhandlungen aus dem Gesamtgebiete der Kriminalpsychologie.* (Heidelberger Abhandlungen.)

The first monograph of the new series on criminal psychology edited by K. von Lilienthal, F. Nissel, S. Schott and C. Wilmanns, comes from Heidelberg. It is a quarto volume of nearly 500 pages devoted to the study of 105 delinquent boys in the Grandducal Reform School (Zwangs-Erziehungsanstalt), at Flehingen in Baden. This fact alone discloses the fundamental importance of this splendid project for publishing research treatises in this field, and the thoroughness with which it is being carried out. Such psychological studies of the average offenders found in various correctional institutions will establish a new and far safer basis for making up our minds about the causes of crime. If we are ever to adjust our theories concerning the influence of heredity and environment to the facts, the extensive study of individual cases offers the best way of approaching a solution. The reviewer is tempted to proclaim Gruhle's volume as the cornerstone in this new edifice. Besides other studies of a like nature devoted to the inmates of other institutions the editors propose to include in the new series, monographs on the statistical side of criminology.

This first monograph is of unusual weight so far as the conclusions which it reaches, regarding the vexing question of nature versus nurture; but it is even more important for the complete way in which Gruhle develops his method of studying the causes of crime. To speak of Gruhle's method as a new way of investigating crime would be too extreme, yet the old methods of analyzing causes certainly take on a new aspect in this work. The central conception of the method is that the investigator, by getting a complete life history of an offender, then studying him in his everyday life, and questioning him from an hour and a half to four hours on many sides of his character and history, will be able to form a trustworthy judgment as to the relative importance as a whole of the instinctive and environmental factors contributing to his criminal conduct.

An individual whose delinquency is explained entirely by his natural tendencies (*Anlage*) is designated as belonging to the "A-Group"; when explained as mainly due to *Anlage* although the *milieu* was also influential, he is put in the group "A-plus-(M)"; as equally by both in the group "A-plus-M"; mainly through environment, "M-plus-(A)"; or entirely by the *milieu*, "M".

This classification is then made the basis for an elaborate study of the importance of various factors found in the environment, family, or personal history and the mental and physical characteristics of the individual, in order to reach general principles for explaining anti-social behavior.

In the first half of the book Gruhle endeavors to present as a whole his group of 105 delinquent boys, 15 to 20 years of age, sent to the Flehingen institution for compulsory training. This group was selected as fairly representative of the more serious type of juvenile offenders who have passed the age for compulsory attendance in the public schools. They are old enough to have

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characters sufficiently formed to be judged and their own views as to their troubles have some weight. The investigator attempts to show this group from as many different points of view as possible, actually tabulating each one in the entire group with reference to over seventy different environmental and instinctive factors bearing upon his delinquency. These factors include, among others, such facts as the birthplace of the parents and the boys, the season of year in which the child is born, the occupations in which the parents were engaged, the illegitimacy of the parents and the boys, the abnormality, illness, drunkenness and criminality of the parents, the size of the families, the partial or complete orphanage of the children, the ages when they began to become delinquent, the nature of their offenses, the kinds of their punishments, their abilities and various traits of mind and conduct, as well as his fundamental expert estimate of the weight of nature and nurture in explaining their delinquency. Nearly all of the points mentioned he analyzes much further than has usually been done, and it is this further elaboration which throws new light on the influence of these factors as causes of criminality. It is only when this method is pursued that we may hope to resolve the conflicting statements of various investigators. Statistical studies have often been content to leave a classification with merely the statement of "drunken father." Gruhle points out how this factor may be important mainly through heredity or through environment or through both, and that this can be determined only through further study of the particular cases. The same is true of illegitimacy, orphanage, and other factors which he illuminates. An exceedingly valuable service of Gruhle's monograph consists in bringing together all of the German investigations down to 1912 bearing upon his topics and using them for purposes of comparison and criticism. In this connection he has a bibliography of eleven pages.

In the second half of the book Gruhle gives in series the history of each of his cases with a statement of the boy's characteristics so far as he has judged them. These are followed by a complete tabular resumé and a colored plate showing the institutional history of each boy as to the time he has spent in various kinds of correctional or charitable institutions. These personal histories of the ordinary run of juvenile offenders are probably the best collection that has been made. It is in this collection of facts that it is hoped the work will have a permanent value in the field of criminal psychology. Whatever suggestions Gruhle may get from his summaries of the facts, he is constantly urging the reader to check them from the study of the cases as presented here in detail.

Turning to the conclusions which he draws from his investigation he offers perhaps the best judgment that is yet available on the relative importance of instinct and environment as causes of delinquency. It is a judgment based in the last analysis upon the expert opinion of the investigator upon each case after making a thorough study of the entire circumstances and personality. Until we are able to test objectively the factors estimated, and that day is probably not near at hand, we must give great weight to conclusions reached by the method used here and published with the facts to test them. In his summary Gruhle attributes the cause of the delinquency among his 105 boys to the environment alone in 9 per cent of the cases, to the environment chiefly in 9 per cent more of the cases, as much to the environment as to natural tendency in 41 per cent; in part to the environment, but mainly to instinct in 20 per cent,

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solely to instinct in 21 per cent. Moreover, he estimates the number who might have been saved from delinquency by a well-ordered environment and the right kind of guidance before they went astray. He places these as follows: With certainty, 30 per cent; probably, 11 per cent; perhaps, 15 per cent; with difficulty, 31 per cent; surely not, 13 per cent. Although he thinks that 87 per cent might thus possibly have been saved if they had been properly cared for from the start, this does not mean that this large proportion can at their present ages be trained to become good citizens.

A summary regarding the relation between abnormality and crime is very suggestive as a criticism of the current views, especially of physicians. He says: "The knowledge that so and so many of the criminal youths are abnormal is indeed very significant for the therapeutic treatment of the social offenders, for the choice of ways which should be used to improve the youths; but this knowledge has no significance for establishing the causes of delinquency." "The abnormal parents really have more children who are abnormal and under the average in capacity, but their children are actually more seldom delinquent because of their natural tendencies than the children of normal parents." Gruhle agrees with Baer that "the criminal type of Lomroso's school is an anthropological error."

In a careful discussion of the relative importance of nature and nurture so far as they influence his group of illegitimate boys, he agrees with Spann, who places the emphasis on their environment as contrasted with Taube, who attributes their greater tendency to delinquency to heredity. While the analysis is admirably judicial, the reviewer must confess that the evidence either way does not appear to him convincing on this question. In general Gruhle finds that *milieu* is more important with those who go astray early in life, while abnormality or incapacity are not emphasized among these early offenders. Those who fall through their instinctive tendency are especially prominent among the early thieves as compared with the group of wanderers. The opposite is true of the abnormal group. Among those who become delinquent after the compulsory school age nature and nurture seem to be equally influential, while incapacity and rough brutal tendencies then become more important.

Among the city children in his group delinquency appears somewhat earlier, truancy and the roving spirit being more apparent. Among the village children immorality and stealing are emphasized as early signs of delinquency, the former continuing to be pronounced in later development. The country children are also punished more severely and show more rough brutal conduct. With 59 per cent of the repeaters their instinctive tendency is emphasized as compared with about 41 per cent of the entire group. Repeaters tend also to be inactive and duller than the average. The group of sex offenders resembles the average delinquent closely.

Some of the facts regarding the Flehingen group are especially interesting. The correlations between drunkenness, abnormality, illness and criminality of the parents is noteworthy. In only seven of the 105 families is there neither a family taint nor seriously harmful surroundings at home, not counting illegitimacy. Forty-eight per cent have either a mentally abnormal or drunken parent. Forty-six per cent have lost either one or both parents. This is an important harmful influence in developing anti-social behavior which has not been sufficiently studied heretofore. The curves for delinquency increase decidedly the

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first year after compulsory school attendance ceases. Only 14 per cent are healthy in both body and mind and equal to the average in ability. Fifty-two of the boys have repeated one or more classes in school and three others have practically no school training. Only forty-three had reached the eighth grade or above. It is unfortunate that we are dependent on Gruhle's estimate of the capacity and ability of his group, but it should be understood that the group were studied in the summer of 1907 before the graded systems of tests came into general use. He does not apparently have much sympathy for formal methods of testing individuals and specifically eschews both mental tests and physical measurements. According to his opinion 45 per cent of his group are under the average in capacity, 25 per cent of average capacity, and 30 per cent above. Nineteen per cent he thinks are congenitally feeble-minded. The comparison of these figures with those obtained by tests shows that this is one of the weakest places in his research.

By way of caution in considering the results of this study one should remember the dangers which its method makes likely and which Gruhle does not entirely escape at times, although he recognizes their importance and cautions against them. Comparison of percentages of small numbers is especially hazardous when these differences are not pronounced. For example, a difference of 6 per cent between the group of thirty-two who are over the average in capacity with forty-seven boys under the average, which Gruhle finds of importance, can hardly be significant when one considers that it would be eliminated by change in two individuals in the smaller group.

The most fundamental objection to the method of study used in this type of research is, of course, the subjective nature of the judgments passed on the individuals. One feels, for instance, that a decided advance has been made in studying the relation of incapacity to delinquency through the use of the more objective Binet system of mental tests. To illustrate: Gruhle states that 50 per cent of his children who are over the average in capacity are from families with at least one parent drunken or abnormal mentally, while only 55 per cent of those under the average in capacity are from such families. One wishes most heartily that this matter of over or under capacity depended upon some objective standard independent of the investigator's opinion. Again, when one finds, for example, that the *Anlage* is more important with repeaters the scientist is somewhat cautious, because it still remains to be determined whether the larger percentage of these repeaters influenced toward their delinquency by heredity was due to the importance of instinct or to Gruhle's tendency, albeit unintentional, to class in the *Anlage* group those who were found to be repeaters. Gruhle believes that the supposition that frequent and serious punishment would make him tend to class a boy in the A-group and then later take the *Anlage* as the cause of more frequent and serious offenses is overcome by the fact that his A-judgment in each case was his impression of the entire personality and situation, that it was never consciously made upon the kind or frequency of punishment.

In the opinion of the reviewer Gruhle succeeds admirably in his aim of keeping clear from fixed conclusions regarding nature and nurture as well as from letting his judgments be influenced by the practical effect of his conclusions. It is certainly true that conclusions reached by judging each individual separately and then summarizing are more likely to be unprejudiced than

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those passed in the popular way upon the group of delinquents as a whole, a method which has obscured the public mind altogether too long. It is probably also true that wherever mental tests are not yet available, especially concerning fundamental emotional traits, the method used by Gruhle is the best available today. Such a careful study as this, instead of having the effect of slackening the search for objective standards for comparisons, should increase the enthusiasms for that search since it makes its need more obvious.

The University of Minnesota.

J. B. MINER.

MEDICO-LEGAL ASPECTS OF MORAL OFFENSES. By *Dr. L. Thoinot*, professor in the Medical Faculty of Paris. (Translated from the original French and enlarged by *Dr. Arthur W. Weyse*, professor in Boston University.) Illustrated with seventeen engravings, including four charts and diagrams. F. A. Davis Co., Philadelphia, 1911. Pp. XVI + 487.

Dr. Thoinot's book "*Attentats aux Mœurs et Perversions du Sens genital*," is based on his course of lectures delivered to the students at the Medical School of Paris. They were intended to bring certain subjects up to date, and to create familiarity with other subjects. The whole question of moral offenses, some of which have taken on a singularly different aspect since *Tardieu's* classical and original work on *Etude Médico-Légale sur les Attentats aux Mœurs*, are in it brought up to date, and the perversions of the sexual instinct are made familiar, which but yesterday were almost denied, and are still unknown to the majority of physicians and students, despite their triple interest—clinical, psychological, and medico-legal.

By this translation not only have the efforts of the French author, as set forth in his preface, been made fully available to the English reader, but the value of the work has been greatly enhanced by the addition of an appendix giving a general summary of wherein the law and practice, of both England and the United States, differ from that of France. These points of difference are well illustrated also by numerous foot-notes marked with the initials of the translator. The moral offenses are exhaustively considered under the three class groups of rapes, indecent assaults, and of public offenses against decency, while the perversions of sexual instinct are considered under two classes. The first being that of the true inversions, that is of the morbid or pathological inversions or perversions, which are natural or congenital, although their appearance may be retarded. The second class are the false inversions, which are artificial; that is are vice inversions or perversions. These are not congenital, but are acquired.

All the classes of moral offenses are fully considered from both their medical and legal aspects, and are illustrated by the records of notable cases drawn from the published literature of the world. In like manner are the perversions of sexual instinct treated, and illustrative cases of uranism or mental degeneration, of exhibitionism, of fetichism, of sadism and masochism, likewise of bestiality, necrophilia, nymphomania, satyriasis and erotomania are cited. The work as a whole is undoubtedly the most comprehensive of any which has yet appeared in English upon these subjects, and may be consulted with advantage by students seeking information in such fields.

Boston.

BENNETT F. DAVENPORT, Medico-Legal Expert.

REVIEWS AND CRITICISMS

FORENSIC MEDICINE. By *Dr. G. Puppe*, Professor of Legal Medicine, Königsberg i. P. 2 Vol. J. F. Lehmann, Munich, 1908. Pp. 692.

The first thing which strikes one very forcibly upon opening Professor Puppe's work are the very excellent illustrations, especially the colored plates. These are in most instances taken from the late E. von Hoffmann's Atlas of Forensic Medicine. The work is an excellent treatise on this subject but owing to the fact that it deals with medicine as related to the German laws, it can hardly be of much value to the American jurist except from a comparative standpoint. The physician, on the other hand, will find it an excellent guide.

Especially commendable are the chapters dealing with the legal phases which may arise in the practice of obstetrics and with the relation of insanity to the law.

It is to be regretted that in discussing the question of syphilis the author omitted mentioning the Wassermann reaction, as in this we have the most reliable test for establishing the existence of syphilis. The author has devoted a good deal of space to the discussion of the subject of social medicine, that is, medicine as it is related to accident and life insurance, a subject not usually dealt with in books of this nature.

The work is supplemented by seventy colored plates and two hundred and four prints and from this point of view it can hardly be excelled. A good colored plate often gives more information than pages of printed matter, especially where anatomical specimens are not at hand.

The work is highly recommended to all those interested in the subject of forensic medicine.

BERNARD GLUECK, M. D.

Government Hospital for the Insane, Washington, D. C.

DAS MORALISCHE FÜHLEN UND BEGREIFEN BEI IMBEZILLEN UND BEI KRIMINELLEN DEGENERIERTEN. By *Dr. Med. Hermann*. Carl Marhold Verlagsbuchhandlung, Halle a. S. 1912. Pp. 90. Price, M. 2.10.

In this monograph, which is a part of the eighth volume of the series on *Juristisch-psychiatrische Grenzfragen*, Dr. Hermann critically reviews the German literature (British and American contributions are ignored) bearing on the question of moral imbecility or moral insanity, and presents a detailed discussion of his own original investigation of 29 institutional cases, 19 of whom were classified as criminals, 5 as degenerates without intellectual defects, 2 as debilitated, probably morons, 6 as imbeciles, and 10 as idiots.

The moral and intellectual development of these cases was investigated by the aid of Cimbals' *Untersuchungsschemata*. These contain a series of questions so framed as to test the subject's degree of intellectual development and moral insight. The tests included a determination of the subject's knowledge of various basal ethical conceptions and of various statutes in criminal jurisprudence, and of his ability properly to interpret and sympathetically to appreciate pictures as well as a story with ethical motives.

The study of the idiots and imbeciles indicated that their degree of morality did not run parallel with their degree of intelligence. Among the six imbeciles moral conceptions were lacking in only one case, they were satisfactory in two cases and very good in three cases. Knowledge of the law was completely

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lacking only in one case. The *Einfühlung* of pictures proved to be good in five cases, irrespective of the degree of intelligence.

Hence the conclusion is reached that the moral defect in these persons is due to abnormalities in the affective life, and not defects of judgment; feeble-mindedness is a defect of judgment. The affective consciousness, in all degrees of intellectual development in these cases, is not influenced by logical considerations.

Many of the debilitated and degenerate criminals did not manifest a lack of affective *Einfühlung*, nor did they show moral anaesthesia. Even profound degenerates may manifest moral feelings. But all showed evidences of unteachableness. Their uneducability is ascribed to abnormalities of the feelings; to a lack of feeling-dynamic. The ability to learn depends not only on intelligence but on feeling tone.

From a study of these types of criminals the author thus makes the broad inference that criminal and anti-social conduct rests upon a degenerate disharmony in the feeling-dynamic rather than in a defect of judgment.

So far as concerns the forensic aspect of criminality, it is to be observed that most feeble-minded criminals commit misdemeanors with conscious intent and with knowledge of their criminal character, while the degenerate criminals, although they may be regarded as inferior in the psychopathological sense, must not be regarded as suffering from a disturbance of the mind which renders control of the will impossible. The degenerates in their habitual condition are not insane.

The monograph suffers from a lack of crisp, clear-cut summaries of results and conclusions, and from the prevalence of over-long paragraphs; one paragraph covering over nine pages. In this day when books are legion the reading public has a right to demand that authors express their conclusions in succinct, perspicuous statements.

J. E. WALLACE WALLIN.

Psychological Clinic, University of Pittsburgh.

CRIMINAL RESPONSIBILITY AND SOCIAL CONSTRAINT. By Ray Madding McConnell, Ph. D., New York. Charles Scribner's Sons: 1912. Pp. vi. + 339. Price \$1.50.

Most prejudices have more lives than the traditional cat. And legal or theological concepts are peculiarly slow to change and prone long to outlive their utility. This is strikingly true of the older, more metaphysical notions of punishment, the sanctions for it, and the methods of applying it. The student of criminology, therefore, welcomes anything which will contribute to making the theory and practice of our penal system more consistent and more positive. Such a contribution, it seems to us, Dr. McConnell has made in this study of criminal responsibility. Its frank and unabashed avowal of determinism and its equally emphatic insistence upon social defense as the only rational sanction for punishment rank the author with the most modern of our modernists in criminology.

Our penal system is complex because it is the growth of centuries of conflicting theories and aims. A dozen different aims have been suggested and followed in dealing with the offender. But they all reduce to four fundamental types, expiation, retribution, deterrence, and reformation. To these the author

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devotes four chapters, showing the insufficiency of each, and of all four taken together. The method of handling the facts and arguments in these chapters is admirable and particularly well suited to teachers' and students' needs. First comes a fair and thorough explanation of the theory with whatever evidence favors it; then follow the objections. To round out a proper and adequate sanction for punitive treatment a fifth aim is added: "Punishment for social utility."

This necessitates a review of the whole question of free will and determinism as bearing on the questions of "freedom in crime," and "criminal motives." This constitutes the second part and the bulk of the book. Dr. McConnell rejects in the most unqualified way free-will in whatever form it is suggested and shows conclusively the mess of fallacy into which the free-willists fall when confronted with actual problems of education or punishment. To accept free-will honestly and fully would not leave either school, court, church or any other institution for teaching, disciplining or counseling, a single leg to stand on. For what rewards or what disciplines can penetrate or influence a spontaneous, self-subsistent, self-sufficient, absolute entity which is remote from our world's concerns? Manifestly such doctrine is anarchy. Hence Dr. McConnell has rendered a notable service in showing up this anarchy which lies implicit in the assumptions of the classical penologists and moralists. Perhaps to the teacher this discussion of freedom in crime is the most valuable part of the book; for we usually find great difficulty in getting the average student to grasp the meaning of determinism and free-will, or to sense the significance of the antithesis and its vital bearing on diametrically opposed systems of criminology. It supplies in clear and readable form just the psychological and philosophical background for an intelligent discussion of these problems and their implications. The author is quite correct in emphasizing that the problem of free-will is not merely an out-worn academic quibble but that it is a practical every-day issue that confronts us at every turn. For upon it depends the whole question of responsibility. How, otherwise, shall we account for the difference in treatment accorded to the sane and insane murderer, the child homicide? Why do we send this boy to a reformatory, that one to a home for feeble-minded, the other to the care of a probation officer?

The last part of the book is given over to the logical developments of having rejected free-will and accepted the sanction of social utility for punishment. Rightly, we think, the author concludes that determinism does not mean fatalism, nor freedom from social responsibility. For freeing the offender from metaphysical or theological notions of personal responsibility does not mean freeing him from consideration as a social nuisance or a social menace. The responsibility is merely shifted to society, and the emphasis is laid upon the necessity for permanent elimination of the offender or for his good social conduct as a guarantee for social protection and well-being. Only by such a shifting of responsibility can we ever hope to secure any serious attention to curative and preventive methods in the battle against crime. "Cure of the individual, if cure can be possible, but in any case defense of Society against his noxious freedom," (quoted with approval from Gray) might be taken as the text and conclusion of the whole book.

A few details of the book are worthy of special mention. Notably the pessimistic view of the reformatory effects of punishment which the author holds

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in common with Ferri, Parsons, Drähms, McKim, etc. Yet he somewhat contradicts his pessimism at times; for example (pp. 120-1): "Such absolutely incorrigible malefactors must be considered rare * * * as regards the great majority of offenders, those who are delinquent as the result of improper training, reformation is the course for society to pursue." With Schopenhauer he lays great stress on intellectual education as the only way to reform the heart. A reference to Superintendent Brockway would have added much to the argument on this point. Similarly a comparison with Lombroso's schemes for utilizing criminals might have strengthened his plea for turning the criminal from "a destructive social force into a constructive one." (P. 123).

Especially timely and incisive is the criticism of attempts to distinguish between partial and complete irresponsibility. Only the most abject ignorance of psychology could adjudge an unbalanced mind normal and therefore responsible in spots. Perhaps one may, with a friend of mine, admire Wagner *in spots*, but when an insane offender comes up for judgment he either is or is not insane, unbalanced; in view of penal or hospital treatment he must be taken *as a unit, not in spots!* The author's position on the question of insanity as a "defense" is equally sound. "Mental derangement is an explanation, but not a defense. * * * When we declare the insane person to be morally irresponsible for his deeds * * * we certainly do not mean to imply that he cannot be held socially accountable for them." Social accountability is a far safer guide than personal responsibility in the treatment of the anti-social classes.

It is with the utmost diffidence that I venture to offer a few critical suggestions, for Dr. McConnell's untimely death prevented such a recasting of the book as would forestall many criticisms. Hence my suggestions are directed towards students who will use this book and also to those to whom the preparation of future editions of the work may be entrusted. In the first place the lack of an index is a distinct loss to any book. Again, there is considerable repetition in the discussion, notably in Chap. vii. In fact nothing would be lost and much gained by a considerable compression throughout Part ii; chapters xi, xiv, xvi, xvii, xxii might be cut out entirely or boiled down and distributed among other chapters.

In the discussion of aims of punishment I am (more than Dr. McConnell) inclined to lay the emphasis in punishment for retribution rather on the historical than on the philosophical aspect, to avoid confusion with expiation, for retribution for violated principles of "Justice" as the author works it out differs but slightly, if at all, from expiation for a disturbed "Moral Order."

Perhaps it is only a quibble, but when we are told that social defense admits a certain amount of punishment as retribution, and that "On the basis of social necessity, then, legal vengeance is justified." I should much prefer to use the word 'expediency' instead of 'necessity.' Then retribution or vengeance appears only as a confession that part of our people are still savages who need a victim "as an outlet, a kind of safety-valve, for the indignation of the community," etc. We thus avoid the implication of vengeance as a permanent necessity for thoroughly civilized societies.

We are not all of us quite so sure as Dr. McConnell that there are born criminals, "congenital wrong-doers, whose physical and psychical proclivities lead inevitably to crime;" yet that need not alienate us in the slightest from his general thesis nor his conclusions as to practical procedures. Among these latter we

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are glad to note the permanent segregation or the elimination of the incurable or incorrigible, the wider use of reformatories, inebriate asylums, indeterminate sentences, probation, agencies for educating backward children, improving juveniles, aiding discharged prisoners, improving the economic condition of the masses.

The book as a whole stands as an eloquent proof of the author's contention that a man may be at one and the same time a thorough determinist and an unqualified idealist.

University of Illinois.

ARTHUR J. TODD.

QUELQUES MOTS SUR LA LEGISLATION PENALE AMERICAINE. By *Henri Jaspas*;
Revue de Droit Pénal et de Criminologie, VI, 1. Pp. 5-18.

This is a brief discussion of the principal characteristics of penal legislation in this country. It emphasizes the fact that because this is a new country it has not yet fully developed its system of law and is therefore able to experiment with new things. It describes the division of powers between the federal and state governments and points out some of the inconveniences of this division.

The writer then describes what he considers the four principal reforms, namely, the reformatory, the indeterminate sentence, the juvenile court, and probation. His attitude towards these reforms is best indicated in his closing paragraph which, translated, reads as follows: "The system is entirely new. It is based upon scientific data as much as upon the study of judicial statistics and the analysis of numerous cases of criminals, adults or children, to which until now no serious solution had been given. Without doubt the social, economic and moral conditions of the United States are very different from ours; notably tradition, so strong in our legislators and jurists, exercises much less power there. Also it is impossible to think of propagating immediately, and all at once in our country, institutions as original as these. But it is indispensable to study them and learn from them instead of persisting in ideas and practices which are condemned both by science and by experience. To treat children as criminals, to apply to all of them the same regime of imprisonment, to judge them according to the deed which has brought them to the attention of the court, to apply to all the adult criminals the same penitentiary regime, to persist in believing that the cell is a panacea, all this is to close the eyes to the evidence and to continue in an error which becomes less and less excusable when in a number of foreign countries it has been not only recognized but studied and corrected."

M. Jaspas makes one statement which is a little misleading. He says that in Missouri the maximum penalty for perjury is death. This is true only where the perjurer has committed his crime for the purpose of securing the conviction of some one for a capital offense.

University of Missouri.

MAURICE PARMELEE.

SOCIAL ADJUSTMENT. By *Scott Nearing*. Macmillan Company, 1911. Pp. 377.

Professor Nearing accepts the dictum, "To be scientific is to be popular." To him this means that the man of true science has knowledge that the public needs. It also means that it is the duty of the scientist to present his discoveries so that they may be utilized by as large a public as possible. He regards social

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facts as of such great importance that the responsibility incumbent upon the sociologist is unusually great.

The facts which Professor Nearing presents in this volume are the following:

"1. That maladjustment exists in numerous virulent forms, in many parts of the United States.

2. That maladjustment is (1) due to economic causes, (2) involving social cost, and (3) remediable through social action.

3. That maladjustment can be, and in many instances is being, eliminated by efficient education plus wise remedial legislation.

4. That the vast majority of children are born normal and are made abnormal, degenerate, and diseased by their defective environment.

5. That recent investigations demonstrate conclusively that the portion of genius, mediocrity, and defect does not vary materially from one social class to another, and hence all are capable of the same uplift.

6. That progress is impossible so long as society maintains the fatalistic viewpoint which condemns men because of the sins of the fathers and is blind to the transgressions of the brothers.

7. And, finally, that it is through the promulgation of the new view of the universality of human capacity, the remediability of maladjustment, and the advantages of universalized opportunity, that maladjustment will eventually be eliminated and adjustment secured."

The author emphasizes the economic factor in society; assumes the functional point of view in his sociology and psychology; and accepts the statements concerning the similarity (or even identity) of human capacity in all races of mankind.

The book carries out admirably the purpose of the author, is distinctly practical and will play a part in securing social adjustment.

Northwestern University.

WALTER DILL SCOTT.

IMPORTANT DECISIONS IN THE FIELD OF JUDICIAL PSYCHIATRY. Tenth Series. Collected from the literature of the year 1910. By Privatdocent *Dr. W. Vor-kastner*. Carl Marhold, Halle a. S., 1911. Pp. 53. Price m 1.

This summary contains in its 53 pages no less than 77 decisions, arranged according to the paragraphs of the German laws, beginning with the criminal law (pp. 3-13), criminal procedure (pp. 13-19), military criminal law (pp. 19-20), civil code (pp. 20-42, chiefly liability issues and guardianship), civil procedure (pp. 42-52), and finally fees (p. 52), incorporation, and insurance of invalids (p. 53). It would take more space than the original takes to give an adequate epitome of the contents for the American student.

I pick out a few points:

Responsibility does not constitute a legal presumption. Even if the demonstration of irresponsibility appears insufficient, the judge can pass judgment only if the facts before the court leave no doubt in his mind as to the responsibility (p. 4). The court has the choice to turn over the accused to his family or to an educational or reformatory institution; but the decision between the latter two lies in the hands of the administrative authorities (p. 4). Unless a person with a mental defect is under final or provisional guardianship, he or

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his caretaker can take up legal procedures, and in that case the caretaker is merely the representative of a competent person (p. 5). An attendant who helped in the escape of a patient who was under an indictment and admitted to a hospital as a dangerous person, is not protected by the excuse that he did not know that he was sent in by the police and was a dangerous person; the request to watch the man is a sufficient obligation to cover the full extent of the responsibility (p. 5).

When a person kills another in *affect* (emotional excitement), the verdict of murder is excluded even if the killing was previously decided upon in plain deliberation. The act is deliberate only when the culprit during the deed can weigh sufficiently clearly the actual effect of the killing, the motives for and against and the steps required to attain the intended result. He is, however, in a state of *affect*, when his action is governed by an emotional excitement which exceeds the natural excitement of one who is about to kill another and which excludes the logical weighing of the above issues. (This decision of the Reichsgericht, of March 26th, 1909, shows how subtle the issue of intent is and how wise it would be to consider the facts of the case not too closely under one single heading—intent or no intent—but also, from the point of view of the general make-up of the person and the probable result of punitive or corrective treatment. It certainly would lead to much quibbling and perhaps to real blundering if one tried to settle a series of our notorious murder trials according to the above principle).

The appeal of a patient for indemnity for supposed intentional or careless detention in a sanitarium (p. 10) was declined. The physician has no specific right on merely professional grounds to interfere with the bodily integrity or the liberty of a patient. To do anything against the will of the patient would therefore be illegal, unless it is specifically justified by the circumstances in which the physician has to act. The superintendent of an institution is, however, protected as long as the admission-papers fulfil the rules. As to the committing physician, he has to show sufficient reasons and the consent of the legal representative or the relatives of the patient. As "sufficient reasons" the regulations mention danger to oneself or others. The physician is to use his own observation, but he also can admit statements of third persons. In reality, the patient in this case had made an attempt at suicide, and had threatened to shoot her husband. Three courts declined the appeal.

A number of decisions deal with sexual offenses and thefts; and one with the responsibility of falling asleep on account of a sudden and not predictable collapse of energy.

The decisions concerning procedure deal with the admissibility of informants, the professional secret, insane persons as witnesses (the court is at liberty to admit or refuse them), points about the validity of an oath in drunkenness and the validity of documents without oaths, etc. A court may decline the expert's request for observation of a person in an asylum, when it considers the decision in the ordinary course of the trial feasible. An expert is not allowed to refuse to answer questions on the ground that he is not called upon to do this, or that the court has enough personal experience on the points in question. A revision of an acquittal on account of insanity is inadmissible. Objection to an order by the court for observation of the accused in a hospital is inadmissible.

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Of the civil decisions the following may be of interest. Guardianship cannot be urged where the disorder of mental activity is limited to one or a few definite spheres of affairs. A querulant with circumscribed morbid complaints must be shown to be affected in all his actions, and that his entire relation to life is more or less influenced (a rather startling and extreme requirement). The call for guardianship for mental disease does not presuppose that the person should already have damaged his interests, and it is not to be declined because the person is still reasonable and sufficiently competent in some issues. The problem of marriage and divorce, the rights of guardians, etc., receive a number of interesting sidelights.

The above examples will, I hope, give a fair idea of the character of the information furnished in the valuable little summary, of which the eleventh session has just recently been published.

Johns Hopkins University.

ADOLF MEYER.

DAS UNZUCHTIGE UND DIE KUNST. EINE JURISTISCHE STUDIE FÜR JURISTEN UND LAIEN. Von *Johann Lazarus*. J. Guttentag, Berlin, 1909. Pp. 168. Price M 3.50.

"Because the judicial decision is so little related to the law which is by chance in effect in this or that time or place, judges should consider their decisions as *sub specie aeternitatis* and bear in mind that each decision is a brick in the great building of universal culture. And even though the judge must never lose his perception of the actual life of his time, he must also be able to raise his eyes beyond the crash and tumult of the present, that so soon lapses and becomes past, to the eternal."

This is the peroration which closes this very clear and well-written *Zerlegung* of the relation of the indecent to art, in the eyes of the German law. As the reviewer knows nothing about law and as the legal discussion occupies but a very small portion of the monograph (chapters 1, 2, 4, 8, 22, 24) he will confine this review to a statement of the social and psychological basis from which, according to the author, the law arises and which is the force behind its operation.

The law considers that indecent which offends the sense of shame by reference to sex. Your sense of shame is offended when you feel ashamed, when some defect in your own person becomes noticeable to another. You feel ashamed about other persons only when you are responsible for them or when they are so intimate that you completely share their feelings. What is essential is this: *something gets exposed*. If the exposure gives rise to a feeling of unpleasantness this unpleasantness is shame. Exposure implies concealment and mankind most conceals the sex-life and the organs and objects that are concerned with the functions of the body. The nude, hence, is a form of exposure; but it is indecent exposure only when it arouses shame. There is thus a difference between exposure and exhibition (*Offenbarung*) and indecent exposure (*Missoffenbarung*). The sense of shame is aroused by both; but it is offended (*verletzt*) only by the latter. Such offense differs from offenses against decency or good form (*Anstandsverletzung*) in that the latter presupposes guilt, while the former does not; the former turns on an "esthetic" incongruity between custom (*Sitte*) and conduct, and stands half-way between morality and the penal

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esthetic. So standing, it varies like fashion, according to epoch and social class, and the feeling for it needs no legal protection. The law often confuses an offense against decency with an offense to the sense of shame. The latter has a much deeper root in human nature, and is far more constant and uniform among all peoples. Its development is, of course, modified in various ways. It may be transferred from real to esthetic objects, restricted by habit and necessity, sharpened or dulled by various interests of life, set aside in the cause of utility. On the other hand, it plays an important role in sex-defence. The exposure of vulnerable areas, must in the early days of the race, have been a weakness. And the necessary intensity of the sexual impulse must have exposed the race to that weakness in high degree. The shame-sense, leading to the covering of the body, may then have worked well defensively. But in so working it becomes a fact (however distinct conceptually) intimately connected with the stimulation of sensuality, and hence needs all the more to be protected against offense.

A protective law against indecency, hence, is quite justified. By indecency (*Unzucht*) is meant "forbidden sexual action, more properly, one that is in itself prohibited." "Indecent" (*Unzüchtig*) must, therefore, mean "anything offensive to morality in a sexual way, though the offense be due only to accompanying circumstances." (pp. 31-57). According to law it is anything of which the verbal or pictorial reproduction is prohibited by sexual morality. It is the use of writing, drawing or presentation to set forth things which cannot be set forth because of their sexual character: i. e., it is the indecent exposure of sexual matters. Such exposure offends the sense of shame.

What bearing have this sense and the law defending it on art? Inasmuch as this sense is but one of our interests, the law must not defend it at the expense of any of the others. There exists, of course, a historic conflict between the puritanic cult of goodness and the cult of beauty. The law must have regard for neither extreme. The field of art is as broad as human experience and the poet and painter may not except the nude, the exotic, the sexual, from artistic portrayal. The field is, of course, not free from things that do offend the sense of shame; nor does artistry inhibit indecency—witness the pornographic section of the Naples Museum, tales by Aretine, and verses by Ovid. The law's task is to render justice to both the artistry and the shame-sense.

The sense of shame and the moral sense are distinct. The latter can, like our sense of decency, be offended only where responsibility is assumed; whereas the former may be offended by irresponsibles like lunatics, animals, etc. A work may offend both together or either independently. Different though they are, they can not be readily separated, for the sense of shame is not a private one, but a common one. It is what the French mean by *la pudeur publique*. But what is common or public shame? Actual shame is always that of an individual, and individuals vary. Who or what shall be the measure? Here the law must have recourse to itself; the *common* sense of shame is the sense intended by statute; the sense that may be offended by sexual exposure. The indecent, hence, is what offends this sense of shame.

Is the indecent that which excites lust? Not merely—some pictures and writings are so bad as to fail altogether in stimulating sensuality. These dull the sense of shame, and so, hurt it. On the other hand, many works of art do evoke lustful feelings, but contain nothing obscene. Lustfulness is, in fact, not essential to indecency, but may be considered as accessory. Everything turns

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then on *interest*, and crimes may be classified as objective or subjective accordingly. A crime is objective only when committed ignorantly by the criminal, subjective when committed knowingly. With respect to act, the doer is to be punished—although the work is objective—on the *subjective* basis. This involves a consideration of the purpose, condition, and tendency of the work of art. Some authorities consider that certain purposes are invariably implicative of indecency. Such purposes are those of the originator of the work alone, however; those of the propagator are to be considered only as accessory. What is essential is this: "the purpose must have received recognizable expression in the work itself" (p. 54). For there are also unintended effects, for which the author is not to blame, and good intention mitigates these, though it does not excuse them. Culpability occurs where the author intentionally stirs the lower impulses, for the sense of shame then becomes more responsive, and where he uses a legitimate aim as a cloak for indecency. Often, of course, the reverse occurs and indecency is used as a means to draw the attention to high truths. In either case there arises a possible quarrel between these two purposes, and a consequent vacillation in the sense of shame. Culpability diminishes with respect to the thing itself, when it is misapplied; or when it loses circulation, or when the sense of shame is modified by habit. Certain organs are of course so intimately associated with sex that habit can have no modifying influence; in such cases purpose only can determine indecency. But as a rule, it is significant for art that custom may dull the sense of shame, leading to the acceptance of nudes in sculpture and painting, etc. The sense may be further inhibited by circumstances, such as the mood evoked by the occasion on which a possibly shameful object is viewed; by the object's historic background; by the "sense of the classic;" (the latter, though inhibiting shame, is no license for circulation); by interest (e. g., scientific interest in a lunatic's antics, which may lead you to risk getting your sense of shame wounded), scientific or historic; by the use of foreign language. Whatever the interest be that inhibits shame, it need not be praiseworthy, e. g., curiosity, joy, hate. Moral disgust, on the contrary always intensifies the sense of shame. With all this art has little to do. If it is good, it yields an esthetic experience, and the esthetic experience is a revelation of the divine, not an exposure of the indecent. Anything, hence, may be the subject matter of art. But, the greater the novelty, the precision, the definiteness, the closeness, of its relation to the sexual, the greater of necessity must be its esthetic power that shall silence shame." (p. 65).

Now a work of art is made of parts. Whether any one of these parts is shameful is determined, in the first instance, by the nature of the whole. When whole and part are not closely related, or are separable, the part is to be treated as an independent unit. Where they are not so, and any relation exists of part to whole, in which part determines the whole, indecency in the part constitutes indecency in the whole. Sometimes the relation is problematic, as in the case of the *Decameron*. If the setting is neglected or negligible, a story is to be treated as an independent work.

Independent treatment of parts and wholes is a modification of a work of art. Such works are, of course, otherwise changed; they are worked over and reproduced. A copy, different from its original requires a different judgment as to its decency. So also a poem taken by itself and the same poem in a context. So also anything published serially, or in translation. There are to be consid-

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ered the effect of isolating parts, of the use of foreign terms, etc. Sometimes indecency in a work supervenes on the loss of literary quality or esthetic power. This may come about by means of accompanying circumstances as well as by partition. There is a *relative indecency* evoked by environment, or by use of the object as a means to an alien end. With this in consideration "an indecent work is one that tends in itself or under favorable circumstances to offend the sense of shame," while a work not indecent would never do so, even though it may be an incidental cause in such an offense. In the latter case indecency would be only relative.

The converse of the independent treatment of parts and wholes is the composition into wholes of separate works. There is an indecency of composition to be set over against the decency of distribution in a unit composed of picture and text. Thus the word *Après* by itself, and the sleeping Venus of Giorgione by itself, are each decent. The former as subscription to the latter makes an indecent whole. Of course, the converse is also possible.

The manner of circulation and advertisement may definitely affect the decency of a work of art. They may turn a relatively indecent into a concretely indecent work by preventing the action of corrective circumstances. The legend has much to do here: "for sports," "for men only," may convert the entire status of a work. Another important influence is the particular public for which a work is intended. What may be indecent to one social group may be the reverse to another, and the social group may be designated by the price of the work. Work may be offered to few or even definitely selected individuals; it may be printed in very limited editions, be exhibited briefly in very limited space without further advertisement, may be advertised only in places frequented by selected classes. These, together with the use of a foreign tongue, are modes of appealing to different social orders—chiefly such as have scientific and esthetic interests. Appeal to the illiterate is determined by the language used and the mechanics of printing. While again, the ability on the part of the public appealed to, to appreciate other qualities checks the appeal to indecency. A Roman laborer will have an esthetic experience when a Berliner will see only a piquant nudity.

That children need particularly to be protected goes without saying. And as for women, the belief that they must be more restrained than men in matters of sex has given rise to a double standard for the two sexes. This duplicity is being modified by the spread of culture and a judge must take account of the modification in passing judgment on indecency. People without any sense of shame whatever fall beyond the limit of this inquiry. Indecency exists only where the sense of shame is offended by indecent exposure.

But withal—whose sense of shame? It has already been seen that individual variations are great. An offense is committed, according to law where somebody is actually vexed, either on his own account, or another's. But what is this somebody? He is a *normal* individual. A normal individual is not an average individual. His place is "between the average and the ideal." He is any man who is not abnormal. And with respect to the sense of shame anybody is abnormal, "in whom it is not offended, not only because of his moral defects or under-developed sense of shame or sexual abnormality, but also because his interests are such as to inhibit his shame-sense while observing objects in the plastic arts or in reading poetry offensive to most people." (p. 107). Occupa-

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tion and interest, indeed, may here constitute abnormality; and consequently, experts cannot be experts on the sense of shame. The indecent can be that only which offends the sense of shame of any normal individual. But how is the normal individual to be recognized? The judge must to a large extent, take himself as the standard of normality. If he has prejudices, he must set these aside, and failing this, he must call in experts.

The one matter of which complaints of indecency are most likely to be frequent, is for obvious reasons, the nude. It is hence of great importance to distinguish, in judging, between nudeness and denudation. Indecency always is an exposure, hence a denudation. This may be verbal, since a discussion of what is usually not mentioned is an exposure. But in whatever medium, the nude, being unusual in the daily life, is likely to stir lustfulness. This, we have seen, is independent of offense to the sense of shame; the latter can occur only when no connection of nude and sex has been emphasized. This emphasis comes by way of undue prominence of those parts of the body with respect to which the sexes differ. The consequence is that the nude as such, is and must be indecent (p. 119). Art, however, by its intent, clothes the nude with decency. The nude so clothed must be the customary or conventional nude of each of the arts. In sculpture, e. g., the exposure of pubic hair is indecent; but custom and esthetic effect may work considerable modifications. In painting, the details of the sexual are permissible where the esthetic effect is strong, and being farther removed from nature sculpture, painting has a freer hand. Engraving, for the same reason, has a still freer one. And as for photographs, those of works of art are to be considered as works of art, even when the works of art are not themselves painting or sculptures, but dances and stage pictures. Photographs of actual nude persons, however, particularly of women, constitute under all circumstances an indecent exposure.

So much for the nude as such. There are nudities, like Aphrodite Kalipyges, that are sexual by exhibition of sexual organs, and others, like Titian's Venus of Itrurio, which are so in expression. To make such permissible a very high degree of artistic power is needful. Pictures of disrobing again, always constitute intentional exposure, but these, too, may be justified by artistic effect.

The sense of shame varies not only with the nature of the individual and the social order; it varies also with the period and the place. So far as the judge is concerned, temporally the standard of the present must determine his standard. Changes in this standard must be regarded as abnormal until they become normal. The same thing holds good with respect to place. The judge must consider only the general shame-sense of a given state, for it is the unity of culture that is the efficient determinant as between the decent and the indecent. In every case that comes up for judgment, the justice will have to determine two points: (1) Is the object in question a work of art? (2) Does it offend the sense of shame by means of indecent exposure? The determination of these points will involve all the questions here touched upon. It is best done, as we have seen, upon considering the judge's decision "*sub Specie aeternitatis*."

University of Wisconsin.

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